# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1551.

ROBERT TURNER AND GEORGE E. McCLELLAND, APPELLANTS,

*vs.*

ALFRED A. K. SAWYER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED JANUARY 30, 1890.

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1 *Bill of Complaint.*

UNITED STATES OF AMERICA,
*State and District of Colorado.*

In Equity.

To the judges of the circuit court of the United States for the eighth circuit and district of Colorado:

Your orator, Alfred A. K. Sawyer, of Hillsboro', Montgomery county, Illinois, who is a citizen of the State of Illinois, brings this his bill against Robert Turner, J. S. Allison, and George E. McClelland, who are citizens of the State of Colorado and all residing at or near Idaho Springs, Clear Creek county, in said State.

Your orator represents unto the court that he is the owner of an undivided five-eighths interest in a certain mining claim known as the Wallace lode, situate in Cascade mining district, in
2 Clear Creek county, Colorado, and that the value of his interest therein is twenty-five hundred dollars ($2,500.00) and upwards.

That your orator's title thereto is as follows: That on or about the 20th day of September, A. D. 1879, one John A. Clark entered upon a part of the unoccupied mineral lands of the United States and located and appropriated a certain mining claim by right of discovery, which he then named and which has ever since been known as the Wallace lode, and then and there became the owner of the same as a mineral claim under and by virtue of the acts of Congress relative to the mineral lands of the United States, which said entry and location and appropriation will more fully and at large appear by reference to the location certificate thereof, now of record in the recorder's office in said Clear Creek county, Colorado, in Book 47, at page 138, a certified copy whereof is hereto attached, marked "Exhibit A," and made a part of this bill, and reference to the said record is craved.

That on or about the 19th day of November, A. D. 1879, the said John Clark conveyed the said Wallace lode to one Henry C. Scoville by deed, as will more fully appear by reference to said deed, which deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 45, at page 537. A certified copy of said deed as recorded is hereto attached and marked "Exhibit B" and made a part of this bill, and reference to the said record is craved.

That on or about the 28th day of June, A. D. 1880, the said Henry C. Scoville reconveyed the said Wallace lode to the said John Clark by deed, as will more fully appear by reference to said deed and the record thereof, which deed is now of record in
3 the office of the recorder of said Clear Creek county, Colorado, in Book 52, at page 190. A certified copy of said deed as recorded is hereto attached, marked "Exhibit C," and made a part of this bill, and reference to the said record is craved.

That on or about the 12th day of August, A. D. 1882, the said

John Clark conveyed by deed an undivided three-fourths interest of, in, and to the said Wallace lode to Amos Sawyer and Marcus Finch, as will more fully appear by reference to said deed, hereto attached, marked "Exhibit D," and made a part of this bill.

That on or about the 25th day of October, A. D. 1882, the said John Clark conveyed an undivided one-fourth interest of, in, and to said Wallace lode by deed to one William Hunter, as will more fully appear by reference to said deed, which deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 67, at page 333. A certified copy of said deed as recorded is hereto attached, marked "Exhibit E," and made a part of this bill, and reference to said record is craved.

That on or about the 26th day of October, A. D. 1882, the said Amos Sawyer and Marcus Finch reconveyed an undivided one-half interest of, in, and to said Wallace lode to the said John Clark by deed, as will more fully appear by reference to said deed, hereto attached and marked "Exhibit F," and made a part of this bill.

That on or about the 8th day of November, A. D. 1882, the said John Clark and the said William Hunter executed and delivered their certain power of attorney to one Pierce T. Smith, of the city of Denver, Colorado, constituting and appointing him, the said Pierce T. Smith, their true and lawful attorney, for them and in their name, place, and stead to sell and properly convey an
4&5 undivided three-fourths interest in and to said Wallace lode, as will more fully appear by reference to said power of attorney, hereto attached, marked "Exhibit G," and made a part of this bill.

That said power of attorney remained unrevoked in any manner whatsoever until the power therein granted was used and exercised by the said Pierce T. Smith, the attorney therein named, by making, executing, and delivering a conveyance of an undivided three-fourths interest in and to the said Wallace lode, as will hereinafter more fully appear.

That on or about the 8th day of January, A. D. 1883, the said Marcus Finch conveyed an undivided one-eighth interest of, in, and to the said Wallace lode to one Alice E. Finch, wife of the said Marcus Finch, as will more fully appear by reference to said deed, hereto attached, marked "Exhibit H," and made a part of this bill.

That on or about the 16th day of March, A. D. 1883, the said John Clark and the said William Hunter, by their said attorney-in-fact, Pierce T. Smith, under and by virtue of the said power of attorney hereinbefore mentioned, sold and conveyed by deed an undivided three-fourths interest of, in, and to the said Wallace lode to the same Amos Sawyer hereinbefore mentioned and one John S. Sanderson, as will more fully appear by reference to said deed, hereto attached, marked "Exhibit I," and made a part of this bill.

That at the time of the delivery and execution of said last-mentioned deed ("Exhibit I") there were four certain judgments of record in the office of the recorder of deeds of said Clear Creek county, Colorado, for a sum aggregating about six hundred dollars ($600), upon which execution had been issued and levied upon said undi-

vided three-fourths interest of, in, and to said Wallace lode as the property of the said John Clark—one in favor of one Aaron
6 Sands for the sum of $129.58, costs and interest; one in favor of one George A. Patten for the sum of $165.85, costs and interest; one in favor of one Ira Hutchison for the sum of $50.25, costs and interest, and one in favor of the firm of Ellis and Deemer for the sum of $68.16, costs and interest, and all against the said John Clark as defendant.

That a part of the consideration of the said conveyance from the said John Clark and the said William Hunter, to wit, "Exhibit I," was that the said grantees therein, to wit, said Amos Sawyer and John S. Sanderson, should take up, pay off, and have discharged the said four judgment liens and the debts upon which they were rendered against the said John Clark.

That the sum of the four judgment liens, principal, interest, and costs, was then and there figured up and ascertained, and the sum so determined upon, viz, the full amount of the same, was kept back and retained out of the purchase price paid for the interest of the said John Clark in said Wallace lode by the said Amos Sawyer and John S. Sanderson for the purpose aforesaid, and that afterwards the said John S. Sanderson, acting for himself and the said Amos Sawyer, did pay said debts and did take up and cause the said four liens to be discharged with the balance of the purchase-money for said undivided three-fourths interest in said Wallace lode, so retained for that purpose, by bidding in the interest of the said John Clark and William Hunter of, in, and to said undivided three-fourths interest in said Wallace lode at sheriff's sale, held at the front door of the court-house in Georgetown, Colorado, in said Clear Creek county, on
7 or about the 2nd day of April, A. D. 1883, under and by virtue of four several executions issued upon said judgments and the levy thereunder, as will more fully appear by the certificate of sale made by the sheriff of said Clear Creek county, State of Colorado, to the said John S. Sanderson, now of record in the recorder's office of said Clear Creek county, in Book 67, at page 556. A certified copy of said certificate of sale as recorded is hereto attached, marked "Exhibit J," and made a part of this bill, and reference to said record is craved.

That on or about the 21st day of January, A. D. 1885, the said John S. Sanderson assigned, transferred, and set over unto the said John Clark, for the use and benefit of his grantees in said Wallace lode, said certificate of sale issued by the sheriff of said Clear Creek county, State of Colorado, as last aforesaid, as will more fully appear by reference to said articles of assignment, hereto attached, marked "Exhibit K," and made a part of this bill.

That on or about the 12th day of January, A. D. 1885, the said Amos Sawyer sold and conveyed by deed an undivided one-half interest of, in, and to said Wallace lode to your orator, Alfred A. K. Sawyer, as will hereinafter more fully appear by reference to said deed, hereto attached and marked "Exhibit L" and made a part of this bill.

That on or about the 16th day of March, A. D. 1886, your orator,

Alfred A. K. Sawyer, sold and conveyed by deed to the said Alice E. Finch all his then right, title, and interest of, in, and to the said Wallace lode, as will more fully appear by reference to said deed, which said deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 83, at page 89, a certified copy of which deed as recorded is hereto attached, marked "Exhibit M," and made a part of this bill, and reference to said record is craved.

8 That on or about the 13th day of November, A. D. 1886, the said Alice E. Finch sold and conveyed by deed to your orator, Alfred A. K. Sawyer, all her then right, title, and interest of, in, and to the said Wallace lode, which said interest your orator alleges to be an undivided five-eighths interest, which said last-named conveyance will more fully appear by reference to said deed, which said deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 68, at page 444, a certified copy of which deed as recorded is hereto attached and marked "Exhibit N" and made a part of this bill, and reference to said record is craved.

Your orator further shows that the said John Clark and his grantees or some of them have had continuous and unbroken possession of said mining claim, to wit, said Wallace lode, from the time of the discovery, location, and appropriation thereof, as aforesaid, by the said John Clark down to and until about the 20th day of November, A. D. 1884, and that the same from thence and is now in the possession of the said Robert Turner and his grantees, as will hereinafter more fully appear.

Your orator further shows that all the interest, claim, or demand of the said Robert Turner, J. S. Allison, and George E. McClelland of, in, and to said Wallace lode was derived from a deed made by the sheriff of Clear Creek county, Colorado, under a certificate of sale theretofore issued to one A. K. White upon a sale under an execution issued upon a judgment in favor of one John F. Teal and against the goods, chattels, lands, and tenements of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, which said certificate of sale your orator is informed and believes to have been assigned to the said Robert Turner, and upon a certain notice of

9 forfeiture, under the 2324th section of the Revised Statutes of the United States, published by the said Robert Turner against your orator, more fully hereinafter set forth—that is to say, that on or about the 13th day of August, A. D. 1883, there was filed in the office of the recorder of Clear Creek county, State of Colorado, a certain lien, claim, or demand for labor performed on said Wallace lode by and in favor of the said John F. Teal for the sum of $148.10 against the above-named John S. Sanderson, Pierce T. Smith, and Marcus Finch, and —— Sawyer as the owners thereof, which will more fully appear by reference to said lien, which is now on record in the office of the recorder of said Clear Creek county, Colorado, in Book 64, at page 13, a certified copy of which lien as recorded is hereto annexed and marked "Exhibit (1)" and made a part of this bill, and reference to said record is craved.

That afterwards, on or about the 6th day of March, A. D. 1884, such proceedings were had that a judgment was obtained in the county court of said Clear Creek county, Colorado, by the said John F. Teal to enforce said lien on and against the said interests of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch in the said Wallace lode, as will more fully appear by reference to said proceedings and judgment, which proceedings and judgment are now on record in the county court of said Clear Creek county, Colorado, a certified copy of which proceedings and judgment as entered *are* hereto attached marked "Exhibit 2," and made a part of this bill, and reference to said proceedings and judgment, record, and entry is craved.

10 That on or about the 9th day of May, A. D. 1884, there was issued out of the office of the clerk of the county court of Clear Creek county, Colorado, a certain writ of execution in favor of the said John F. Teal upon said judgment and against the lands, tenements, goods, and chattels of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, which said execution was levied the same day upon all the right, title, and interest of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch of, in, and to said Wallace lode.

That afterwards, to wit, on or about the 2nd day of June, A. D. 1884, under and by virtue of said execution and the levy thereunder, the sheriff of said Clear Creek county, Colorado, sold at public vendue all the right, title, and interest of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, and of them only, of, in, and to the said Wallace lode to one A. K. White, he being the highest bidder at such sale, for the full sum mentioned in said judgment, together with the interest thereon and the costs of said sale, as will more fully appear by a certain certificate of sale made by the sheriff of said Clear Creek county, State of Colorado, in that behalf, now of record in the recorder's office of said Clear Creek county, Colorado, in Book 78, at page 487, a certified copy of which certificate of sale as recorded is hereto attached, marked "Exhibit 3," and made a part of this bill, and reference to said record is craved.

That on information and belief your orator avers that the said certificate of sale last above mentioned was duly assigned by the said A. K. White to the said Robert Turner, but as to when or upon what consideration your orator is ignorant.

11 That on or about the 13th day of August, A. D. 1883, there was filed in the office of the recorder of Clear Creek county, Colorado, a certain lien, claim, or demand for labor performed on said Wallace lode by and in favor of one Charles Christianson for the sum of $227.95 and against the said John S. Sanderson, Pierce T. Smith, and Marcus Finch and —— Sawyer, as the then owners thereof, which will more fully appear by reference to said lien as now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 64, at page 12, a certified copy of which lien as recorded is hereto attached, marked "Exhibit 4," and made a part of this bill, and reference to said record is craved.

That afterwards, on or about the 18th day of July, A. D. 1884,

such proceedings were had that judgment was obtained in the county court of Clear Creek county, Colorado, by the said Charles Christianson to enforce said lien upon and against the interests of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch in the said Wallace lode, as will more fully appear by reference to said judgment, which said judgment is now on record in the county court of said Clear Creek county, Colorado, a certified copy of which judgment as entered and recorded is hereto attached, marked "Exhibit 5," and made a part of this bill, and reference to said record is craved.

That on or about the 27th day of May, A. D. 1884, one William Hunter obtained two certain judgments before James Cherry, one of the justices of the peace for Arapahoe county, Colorado, against the aforesaid John S. Sanderson and Pierce T. Smith, each for the sum of $200, damages and costs of suit; and afterwards, on or
12 about the 16th day of July, A. D. 1883, two certain transcripts of said judgment were filed in the office of the district court clerk of said Arapahoe county.

That on or about the 31st day of May, A. D. 1884, there was filed in the office of the recorder of Clear Creek county, Colorado, two certain transcripts of the aforesaid judgments from the district court of said Arapahoe county, based upon the said two judgments originally obtained before the said James Cherry, justice of the peace aforesaid, as will more fully appear by reference to said transcript of said judgments now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 56, at pages 100 and 101. A certified copy of said transcripts as recorded *are* hereto attached, marked "Exhibit 6," and made a part of this bill, and reference to said record is craved.

That on or about the 27th day of August, A. D. 1884, the said Hunter assigned the aforesaid judgments (two in number) to the said Robert Turner, as will more fully appear by reference to said assignment or assignments now on record in the office of the recorder of said Clear Creek county, Colorado, in Book 79, at page 225. A certified copy of said assignments as recorded *are* hereto attached, marked "Exhibit 7," and made a part of this bill, and reference to said record is craved.

That on or about the 17th day of December, A. D. 1884, there was issued out of the office of the clerk of said county court of said Clear Creek county, Colorado, a certain writ of execution in favor of the said Charles Christianson upon his said judgment for the use of Robert Turner, assignee, and against the lands, tenements, goods, and chattels of the said John S. Sanderson, Pierce T. Smith,
13 and Marcus Finch, which said execution the said Robert Turner, assignee as aforesaid and as a judgment creditor of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, caused to be levied on or about the 18th day of December, A. D. 1884, upon all the right, title, and interest of the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, and of them only, of, in, and to the said Wallace lode, as in such case by the general statutes of the State of Colorado is made and provided.

That on or about the 17th day of December, A. D. 1884, there

was issued out of the office of the clerk of the district court of said Arapahoe county, State of Colorado, two certain writs of execution in favor of the said William Hunter upon his said judgments before then assigned to the said Robert Turner aforesaid and against the goods and chattels, lands and tenements, of the said John S. Sanderson and Pierce T. Smith and none other, and which said executions the said Robert Turner, assignee as aforesaid and as a judgment creditor of the said John S. Sanderson and Pierce T. Smith, caused to be levied on or about the 19th day of December, A. D. 1884, upon all the right, title, and interest of the said John S. Sanderson and Pierce T. Smith, and them only, of, in, and to the said Wallace lode, as in such case by the general statute of the State of Colorado is made and provided.

That afterwards, to wit, on or about the 12th day of January, A. D. 1885, under and by virtue of the execution issued in favor of the said Charles Christianson for the use of the said Robert Turner, assignee, and the levy thereunder, the sheriff of said Clear Creek county, Colorado, sold at public vendue all the right, title, and interest of the said John S. Sanderson, Pierce T. Smith, and
14 Marcus Finch of, in, and to the said Wallace lode to the said Robert Turner, he being the highest bidder at said sale, for the sum of $319.30, which sum exceeded the amount due said Robert Turner, as the assignee of the said A. K. White, upon the certificate of sale issued by the sheriff of said Clear Creek county, Colorado, under the John F. Teal execution as aforesaid, as will more fully appear by a certain certificate of sale made by the sheriff of said Clear Creek county, Colorado, of record in the recorder's office of said Clear Creek county, Colorado, in Book 78, at page 496. A certified copy of said certificate of sale as recorded is hereto attached, marked "Exhibit 8," and made a part of this bill, and reference to said record is craved.

That immediately thereafter, under and by virtue of said executions issued in favor of the said William Hunter upon his said judgments before then assigned to the said Robert Turner as aforesaid and the levy thereunder, the sheriff of said Clear Creek county sold at public vendue all the right, title, and interest of the said John S. Sanderson and Pierce T. Smith and of them only of, in, and to the said Wallace lode to the said Robert Turner, he being the highest bidder at said sale, for the full sum mentioned in said judgments, together with the interest thereon and cost of said sale, as will more fully appear by two certain certificates of sale made by the sheriff of said Clear Creek county, Colorado, of record in the recorder's office of said Clear Creek county in Book 78, at page 497. A certified copy of said certificates of sale as recorded *are* hereto attached, marked "Exhibit 9," and made a part of this bill, and reference to said record is craved.

15 Your orator alleges, upon information and belief, that the sheriff of said county of Clear Creek, Colorado, neglected, refused, and failed to file in the office of the recorder of deeds of said Clear Creek county, Colorado, a certificate of redemption from the said sheriff's sale under the execution in favor of the said John F.

Teal at any time after the levy of the executions issued upon the judgments in favor of the said Charles Christianson and William Hunter for the use of the said Robert Turner, assignee and judgment creditor, and against the said John S. Sanderson, Pierce T. Smith, and Marcus Finch and prior to the date of said sheriff's sale thereunder, to wit, between the 18th day of December, A. D. 1884, and the 12th day of January, A. D. 1885, contrary to the general statutes of said State of Colorado in such case made and provided.

That afterwards, to wit, on or about the 3rd day of March, A. D. 1885, the sheriff of said Clear Creek county, Colorado, contrary to the general statutes of said State of Colorado in such case made and provided, made, executed, and delivered to the said Robert Turner a sheriff's deed of, in, and to the interest in the Wallace lode purchased by the said A. K. White at said sheriff's sale upon the execution in favor of the said John F. Teal, being the same interest in said Wallace lode upon which the said Robert Turner as a judgment creditor, holding as assignee the judgments in favor of Charles Christianson and William Hunter, caused executions to be levied by the sheriff of said Clear Creek county, as hereinbefore set forth, which said sheriff's deed is now on record in the office of the recorder of said Clear Creek county, Colorado, in Book 72, at page 124, a certified copy of which deed as recorded is hereto attached, marked "Exhibit 10," and made a part of this bill, and reference to said record is craved.

16 That on or about the 20th day of November, A. D. 1884, to wit, between that day and the 15th day of December, A. D. 1884, one Washington Johnson, as your orator is informed and believes, at the procurement and request of the said Robert Turner, entered in and upon the said Wallace lode and did and performed thereon the assessment work, so called, for the year 1884 requisite and necessary to be done on unpatented mines and mining claims under and by virtue of section 5 of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May 10th, A. D. 1872, viz., the amount of $100 worth of labor; that, as your orator is informed and believes, the said Robert Turner did not pay the said Washington therefor; that your orator is informed and believes that between the 15th and 20th days of December, A. D. 1884, the said Amos Sawyer and Alice E. Finch, then the owners of an undivided five-eighths interest in the said Wallace lode, then being ignorant that said assessment work had been done, procured the service of one John E. Owens to go to said mining claim and thereupon to do or have done for the year A. D. 1884 said assessment work for them at their expense; that your orator is informed and believes that the said John E. Owens did go to said property at the time last aforesaid, and that he found said assessment work for the year 1884 had already been done, and that the said Owens so informed said Amos Sawyer and Alice E. Finch.

That on the 26th day of January, A. D. 1885, the said Washington Johnson assigned all his interest in said lien to one John W. Ward, and as to whether the said Robert Turner has at any time

actually paid for the said assessment work for the year 1884 done upon the said Wallace lode your orator is ignorant.

17 Your orator further shows that on the 27th day of January, A. D. 1885, said John W. Ward filed in the office of the recorder of Clear Creek county, State of Colorado, said lien, claim, or demand for labor performed upon the said Wallace lode by the said Washington Johnson, being for the annual assessment work for the year A. D. 1884 upon said Wallace lode, and against the said John S. Sanderson, Alice F. Finch, and Amos Sawyer as the owners thereof, which will more fully appear by reference to said lien now on record in the office of the recorder of said Clear Creek county in Book 76, at page 31, a certified copy of which lien as recorded is hereto attached, marked "Exhibit 11," and made a part of this bill, and reference to said record is craved.

Your orator shows, upon information and belief, that on or about the 18th day of January, A. D. 1885, the said Amos Sawyer and Alice E. Finch, who were the owners of an undivided five-eighths interest of, in, and to said Wallace lode during the year A. D. 1884, by and through their duly authorized agent, Marcus Finch, who then and there had power and authority from them for that purpose, offered to pay the said Robert Turner their *pro rata* part, to wit, five-eighths, of the $100 expended for assessment work for the year 1884 upon said Wallace lode, which said sum the said Robert Turner did absolutely refuse to accept and receive from them, and the said Robert Turner did then and there absolutely refuse to receive from them or either of them any sum whatever as and for their share or any share of the expenses theretofore incurred in and about doing the said $100 worth of assessment work upon the said Wallace lode for the year 1884.

18 Your orator avers that the said Alice E. Finch and himself have ever been ready and willing to pay the said Robert Turner this and each of the due and proper proportion of said assessment work for the year 1884 done and performed upon said Wallace lode, and your orator is now ready and willing to pay the same, and hereby tenders and offers to pay the said Robert Turner the sum of $62.50 and interest on the same, at the rate of ten per cent. per annum, from the 15th day of December, A. D. 1884; and, further, that your orator is now ready and willing to pay and doth hereby offer to pay the said Robert Turner and his grantees, or to whom of them the same shall appear to belong, the sum of $62.50 for his proportion of the assessment work on said Wallace lode for the year 1885 and interest on the same from the time the same shall appear to have been done at the rate of ten per cent. per annum.

And, further, that your orator is ready and willing to pay and hereby offers to pay the said Robert Turner and his grantees, or to whom of them the same shall appear to belong, the sum of sixty-two dollars and fifty cents ($62.50) for his proportion of the assessment work on said Wallace lode for the year 1886 and interest on the same from the time when the same shall appear to have been done at the rate of ten per cent. per annum.

Your orator further shows that on or about the 24th day of April,

A. D. 1885, and from thence up to and including the 24th day of July, A. D. 1885, to wit, for fourteen consecutive weeks, the said Robert Turner caused to be published in the Idaho Springs News, in said Clear Creek county, Colorado, a notice in the words and figures following:

"*Forfeiture Notice.*

To A. K. Sawyer, residence unknown:

You are hereby notified that I have performed the annual
19 labor required by law for the year 1884 upon the Wallace lode, situate in Cascade mining district, Clear Creek county, Colorado, and that unless within the time prescribed by law you pay your proportionate amount of said expenditure your interest in said lode will be forfeited to me under the provisions of section 2324 of the Revised Statutes of the United States.

ROBERT TURNER.

Idaho Springs, Colo., April 24th, 1885.
1st pub. April 24th."

That on or about the 24th day of July, A. D. 1885, one P. Mixsell, who was then the publisher of said Idaho Springs News, made his certain affidavit, as such publisher of said paper, that said "forfeiture notice" as herein set forth had been published for fourteen consecutive weeks prior thereto, which said affidavit was afterwards filed in the office of the recorder of said Clear Creek county, Colorado; all of which will more fully appear by reference to a certified copy of said affidavit, hereto attached, marked Exhibit "12," and made a part of this bill.

That on or about the 29th day of October, A, D. 1885, the said Robert Turner made his certain affidavit alleging that your orator, Alfred A. K. Sawyer, had not then complied with the demand contained in said "forfeiture notice," which said affidavit was afterwards filed in the office of the recorder of said Clear Creek county, Colorado; all of which will more fully appear by a certified copy of said affidavit, hereto attached, marked "Exhibit 13," and made a part of this bill.

Your orator further shows that at the time the said Robert Turner caused the said notice of forfeiture to be published as aforesaid he well knew that your orator was not a co-owner in said Wallace lode at any time during the year A. D. 1884, and that the interest then owned therein by your orator was that portion conveyed to him by the said Amos Sawyer by deed dated January 12th, A. D. 1885, hereinbefore set forth and made a part hereof as "Exhibit L," and upon which interest the said Amos Sawyer had offered to pay his *pro rata* part of the said assessment for the year A. D. 1884 as aforesaid.

Your orator further shows that, in fraud of your orator's rights and the rights of the said Amos Sawyer and Alice E. Finch
20 (your orator's grantors), the said Robert Turner, soon after the making and filing by him of the said affidavit of non-

payment by your orator of his said alleged proportion of said assessment work on said Wallace lode for the year 1884, and fraudulently also as against the United States, instituted proceedings in the United States land office at Central City, Colorado, within the jurisdiction of which said office said mining claim, to wit, said Wallace lode, was and is situate, for the purpose of procuring a United States patent therefor to be issued to himself alone and for the purpose of ignoring and if possible barring your orator from his rights, title, and interest in said Wallace lode, and that such proceedings were prosecuted by the said Robert Turner so that on, to wit, the 20th day of April, A. D. 1886, a receiver's receipt, so called, was issued by the receiver of said United States land office at Central City, Colorado, and the same was delivered to the said Robert Turner.

That afterwards, to wit, on the 19th day of May, A. D. 1886, said Robert Turner caused said receiver's receipt to be recorded in the office of the recorder of said Clear Creek county, Colorado, in Book 94, at page 2, all of which will more fully appear by reference to the files, records, and proceedings of the said United States land office at Central City, Colorado, of and concerning the application of said Robert Turner for a United States patent of the said Wallace lode and a certified copy of said receiver's receipt, which is hereto attached, marked "Exhibit 14," and made a part of this bill.

21 Your orator further shows that the application of the said Robert Turner and all the proceedings instigated and prosecuted by him in said United States land office touching the issuance to him of a patent of the said Wallace lode up to and including the issuance and delivery of said receiver's receipt were false and were fraudulent as to your orator and as to the United States and as to the said Amos Sawyer and Alice E. Finch, your orator's grantors, and that the title to the whole of said Wallace lode or any part thereof is not equitably in the said Robert Turner, as the same is made to appear by the said receiver's receipt, nor was the same equitably in the said Robert Turner at the date of the issuing and delivery to him of the receiver's receipt nor at any other time or now, and that the said Robert Turner is not entitled to a patent for the said Wallace lode, and that the said Robert Turner has not now nor never has had any legal title to any part or interest in and to the said Wallace lode.

That on or about the 20th day of April, A. D. 1886, the said Robert Turner conveyed to the said J. S. Allison, one of the defendants herein, an undivided one-fourth interest in and to the said Wallace lode by deed, as will more fully appear by reference to said deed, which deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 83, at page 117. A certified copy of said deed as recorded is hereto attached, marked "Exhibit 15," and made a part of this bill, and reference to said record is craved.

Your orator further shows that the said Robert Turner, on or about the 20th day of April, A. D. 1886, conveyed to the said George E. McClelland, one of the defendants herein, an undivided one-fourth interest of, in, and to the said Wallace lode by deed, as will

more fully appear by reference to said deed, which deed is now of record in the office of the recorder of said Clear Creek county, Colorado, in Book 83, at page 194. A certified copy of said deed as recorded is hereto attached, marked "Exhibit 16," made a part of this bill, and reference to said record is craved.

Your orator further shows that the said Robert Turner, immediately after his purchase of the certificate of sale under the execution issued upon the Teal judgment, as hereinbefore set forth, to wit, on or about November 20th, 1884, entered into and upon said
22 Wallace lode and commenced mining therein and taking and extracting therefrom valuable ores and minerals, and that from thence hitherto he has been and he and his grantors now are mining the same and taking therefrom valuable ores and minerals.

Your orator further shows, upon information and belief, that the defendants herein (the said Robert Turner principally) have, since the 2nd day of June, A. D. 1884, taken and extracted from the said Wallace lode large quantities of valuable ores and minerals, to the amount of and value of the sum of $15,000, and that neither the said Robert Turner or other defendants have ever paid over to the said Alice E. Finch, Amos Sawyer, or your orator, or either of them, any part or proportion whatsoever of the said sum of $15,000 so derived by them as aforesaid, or any other sum, or accounted to them or either of them in any manner therefor or for any part thereof.

Your orator further shows that he is of right entitled to have, demand, and receive five-eighths of the net proceeds of all ores and minerals mined or extracted from said Wallace lode, and that he has requested the said Robert Turner and the said J. S. Allison and the said George E. McClelland to come to an account with him concerning the same, and requested them to pay over to him five-eighths of the net proceeds of the ores and minerals so mined and extracted by them therefrom as aforesaid.

And your orator well hoped that no dispute or difficulty would have occurred respecting the division as aforesaid of the proceeds of the ores and minerals mined from the said Wallace lode, and that the defendants would come to a just and equitable settlement with your orator concerning the same, and that the said defend-
23 ants would recognize and conform to your orator's right, title, and interest of, in, and to the said Wallace lode, and would yield and grant to him his aforesaid right, title, and interest therein without his invoking the aid of this honorable court.

But now, so it is, the defendants claim and pretend that by virtue of said deed made by the sheriff of said Clear Creek county, Colorado, under said sale, under the execution issued upon said judgment in favor of the said John F. Teal and against the said John S. Sanderson, Pierce T. Smith, and Marcus Finch (contrary to the general statutes of the State of Colorado), as hereinbefore set forth, and of the publication of said forfeiture notice and the making and filing of the affidavit of the said Robert Turner touching the non-payment of the proportion of said assessment work done on the interest in said Wallace lode for the year 1884, conveyed to your

orator by the said Amos Sawyer, and the making and filing of the affidavit of the said Washington Johnson touching the doing by him of said assessment work, that the interest of the said Amos Sawyer of, in, and to said Wallace lode, conveyed as aforesaid to your orator, was forfeited and he divested thereof, and that the same thereby became vested in the said Robert Turner.

That the said defendants claim and pretend that the interest of the said Alice E. Finch and the greater part of the interest of the said Amos Sawyer, through whom your orator claims title to an undivided five-eighths interest of, in, and to said Wallace lode, was sold and conveyed to the said Robert Turner by the sale of said Wallace lode, or some undivided part thereof, under some of the various executions hereinbefore mentioned and set forth, and particularly that the undivided one-fourth interest of, in, and to
24 said Wallace lode retained by the said Amos Sawyer and Marcus Finch when they reconveyed an undivided one-half interest therein to the said John Clark by deed, hereinbefore set forth as " Exhibit F," and said undivided one-half interest so reconveyed is the undivided three-fourths interest thereof levied upon as the property of the said John Clark under and by virtue of the executions issued upon the said four several judgments in favor of the said Aaron Sands, George A. Patten, Ira Hutchinson, and Ellis & Deemer, and that the said undivided three-fourths interest in said Wallace lode so levied upon and sold by the sheriff of said Clear Creek county, Colorado, to the said John S. Sanderson as aforesaid was levied upon under and by virtue of the execution issued upon the said judgment in favor of the said John F. Teal and against the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, and passed to the said defendant by the sheriff's deed, made under and by virtue of the said certificate of sale issued to the said A. K. White and assigned to the said Robert Turner as aforesaid.

That the said defendants claim and set forth and pretend that at the time the said Robert Turner commenced and prosecuted his proceedings in the United States land office at Central City, Colorado, as aforesaid, touching the procurement of a United States patent for the said Wallace lode, that he did so as of right, and claim and pretend that the same were legal.

Defendants claim and pretend that said receiver's receipt was legally and properly procured by the said Robert Turner, and that the same is evidence of title, and does in fact put the title of the whole of the said Wallace lode in the said Robert Turner to the exclusion of your orator and every one else save the grantees
25 of him, the said Robert Turner.

That said defendants claim and pretend that the said Robert Turner had and these defendants now have a right to mine said Wallace lode and extract therefrom the ores and minerals therein without rendering an account of the same to your orator or to any one.

That defendants claim and pretend that the deed hereinbefore set forth and referred to, running from the said John Clark to the said William Hunter, of date October 26th, A. D. 1882, purporting

to convey an undivided one-quarter of said lode to said William Hunter, was in fact made long prior to the named date and acknowledgment thereof, and that the same took effect long before the date of said deed, now on record:

Whereas your orator charges the contrary to be the truth, and particularly that said deed made by the sheriff of said Clear Creek county, State of Colorado, under the certificate of sale issued by said sheriff to the said A. K. White and assigned to the said Robert Turner, as aforesaid, under the execution issued upon said judgment in favor of the said John F. Teal and against said John S. Sanderson, Pierce T. Smith, and Marcus Finch, is void and of no effect and conveys no title to any part or interest of, in, or to said Wallace lode to the said Robert Turner, the grantee therein named, and that the publication of said forfeiture notice under said section 2324 of the Revised Statutes of the United States, and the making and filing of said affidavit of the said Robert Turner and of Washington Johnson, and the alleged failure of your orator to pay the proportion of said assessment work of $100.00 upon said interest in said Wallace lode, owned in said year 1884 by the said Amos Sawyer, and afterwards conveyed to your orator, did not divest your orator of his then intetest in said Wallace lode, and that the same did not vest his said interest in said Robert Turner or in any one else; and particularly that there was no deed given to the said William Hunter by the said John Clark, conveying or purporting to convey to the said William Hunter an undivided one-quarter interest or any interest in said Wallace lode, as claimed by the defendants, prior to the deed, now on record as aforesaid, from said John Clark to said William Hunter.

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And your orator charges the fact to be that from the 1st day of February, A. D. 1882, up to and until the 3rd day of August, A. D. 1882, a deed properly executed and acknowledged by the said John Clark to one John S. Sanderson lay and was deposited in escrow in the Denver Bank, so called, in the city of Denver, in the State of Colorado, under an existing valid and binding escrow agreement between the said parties to the said deed, and that the said John Clark had no right, power, or authority to make, execute, or deliver any deed whatever to or for any interest whatever of, in, and to the said Wallace lode from the said first day of February, A. D. 1882, up to and until the 3rd day of August, A. D. 1882.

And your orator charges the fact to be that the undivided one-fourth interest retained in said Wallace lode by the said Amos Sawyer and the said Marcus Finch when an undivided one-half interest therein was reconveyed to the said John Clark by "Exhibit F" herein was free and clear of the said four judgment liens of record in favor of the said Aaron Sands, George A. Patten, Ira Hutchinson, and Ellis & Deemer, and that the said liens ceased, terminated, and were extinguished at the time the said John Sanderson bid said property in for the benefit of himself and the said Amos Sawyer, his co-owner in said undivided three-fourths interest in and to said Wallace lode, at the said sheriff's sale under the executions issued upon said four several judgments, and that the title

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to said undivided three-fourths interest in and to said Wallace lode conveyed by the said John Clark and William Hunter to the said John S. Sanderson and Amos Sawyer by said deed, being Exhibit "I" herein, was held by them in equal parts free and clear of said four several judgment liens.

All of which acts and doings tend to the manifold wrong and injury to your orator and cast a cloud and suspicion upon your orator's title to an undivided five-eighths interest of, in, and to the said Wallace lode.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed herein, and may, upon their several and respective oaths and according to the best and utmost of their several knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises, and that as fully and particularly as though the same were again herein repeated and they thereunto severally and particularly interrogated;

And particularly that the said Robert Turner do full, true, and explicit answers make to the several interrogations hereinafter mentioned, set forth, and numbered—that is to say:

First. Whether or not you were the original locator of the Wallace Lode mining claim mentioned in this bill.

Second. If you shall say you were not the original locator of said Wallace lode mining claim, state who was.

28 Third. Did you ever by contract, by deed, by agreement, or by purchase obtain any right or claim of right to the said Wallace Lode mining claim or any part thereof, or to the possession of the same or any part thereof from John Clark or from any one claiming under him as grantee or assignee, or from any one claiming by, through, or under said John Clark or any grantee or assignee of either him or them or any of them? If yea, state fully and particularly who from, when, and where you obtained such title, and set the same fuliy forth as an exhibit or exhibits.

Fourth. Is there not a chain of title and do you not know that the records of Clear Creek county, Colorado, show a chain of title to said Wallace Lode mining claim from John Clark down to the complainant herein, Alfred A. K. Sawyer, and if you shall say such chain of title is broken, or if you shall claim the same to be broken, state wherein the same ceases to be a chain of title from John Clark down to and into Alfred A. K. Sawyer of, in, and to an undivided five-eighths of said Wallace Lode mining claim.

Fifth. Is it not true that the first and only original interest, claim, or right you had or ever had, if ever any whatever, of, in, and to said Wallace Lode mining claim was derived by certain levies made by the sheriff of Clear Creek county, Colorado, and one of which ripened into a deed from the sheriff of Clear Creek county, Colorado, to you?

Sixth. State fully and particularly by what authority, under and by what claim of right or paper title, and how and from derived did you first enter upon or go into the possession, in whole

29 or in part, of the said Wallace Lode mining claim.

Seventh. If you claim that you have ever at any time been or now are sole owner or sole possessor of said Wallace Lode mining claim, state fully and particularly how, when, and by what means and from whom you first acquired such claimed sole ownership or such claimed sole possession, and set forth copies of all, of each, and of every paper-writing under and by which you claim or have claimed such sole ownership or such sole possession.

Eighth. If you claim that either John Clark or any of his grantees or assignees or any one claiming under or through John Clark or any of his assignees or grantees have ever at any time or in any manner forfeited his or their or any right, title, or interest of, in, and to said Wallace Lode mining claim, state fully and particularly when, how, and by what act or by what neglect they, either or any of them, did so forfeit the same; and if you claim that you have been subrogated to or possessed of any forfeited right, title, or possession of any person or persons of, in, or to said Wallace Lode mining claim, state whose forfeited right you claim, and set forth fully, step by step, when, how, and by what means such person or such persons became divested of his, her, or their right in, to, and over the said Wallace Lode mining claim, and step by step how you became vested of it.

Ninth. Is it not a fact that when the assessment work, so called, upon the said Wallace Lode mining claim for the year 1884 was done there were others interested in said Wallace Lode mining claim with you and had some interest and title in the same; and is it not a fact that after the doing of said assessment work for said year and before any forfeiture steps were taken by you or any proceedings of any kind instituted by you looking to the declaration of a forfeiture that some one or more of such interested persons offered to pay you, by and through Marcus Finch, five-eighths of one hundred dollars, as an for the proportionate amount of one hundred dollars worth of assessment work done on said Wallace Lode mining claim for that year, and that you absolutely refused to accept from such interested person or persons the same or any part thereof?

Tenth. State fully and particularly what man or men did the actual work on the said Wallace Lode mining claim in the year 1884, which was called and considered by you as the assessment work of one hundred dollars in value for that year. By whose orders was it done? Of what did it consist? Was it on the surface or under ground? Was it done on or off the claim? How, by whom, and when was such work paid for? Explain fully and at large how and why it happened that a laborer's lien for doing this very work was filed against the said Wallace Lode mining claim and was a subsisting lien on the same during the time you were attempting to declare a forfeiture in favor of yourself and against your co-owners of said Wallace Lode mining claim for non-payment of their proportion — this very same assessment work.

Eleventh. If in answer to the fifth interrogatory you shall substantially answer yea, or if thereto you shall substantially answer nay, then state fully and particularly what, if any, judgment or

judgments against any owner or claimant of said Wallace
31 Lode mining claim you now do or at any time have claimed under? At whose suit were they and each of them procured? In what court or courts? Against whom were said judgment or judgments obtained, and what, if any, interest did each of such judgment defendants have in the said Wallace Lode mining claim at the date of the rendition of said judgments, and who had an interest, and what particular interest, right, claim, or demand did each of such judgment defendants have in or to said Wallace Lode mining claim at the date of the filing of said judgment or judgments of record in the recorder's office of said Clear Creek county, Colorado? And state who, if any one, who was not a party to either of the suits in which said judgment or judgments were rendered, and whose name or names do not appear as judgment defendants in any of said judgments, had an interest in or any right, title, or claim to said Wallace Lode mining claim or any part thereof, and state fully and particularly what interest, and what right, and what title such person or persons who were not such judgment defendants then had in the same.

Twelfth. You never jumped said Wallace Lode mining claim, did you?

Thirteenth. Your original and first interest in the said Wallace Lode mining claim was derived as an execution and judgment creditor against some one or more of the persons claiming by, through, and under John Clark, was it not? And your subsequent claims in, over, and to said Wallace Lode mining claim are based wholly on a claim of forfeiture under and by virtue of an actual or pretended compliance on your part with section 2324 of the Revised Statutes of the United States, being section five of an act of Congress approved May 10th, 1872, entitled "An act to promote the de-
32 velopment of the mining resources of the United States," and a claim on your part that some one or more of your then co-owners failed to pay their proportion of the assessment work done for the year 1884 on said Wallace Lode mining claim? If not, then how did you ever get any title at all, and what is it, and what is it based upon? State fully and explicitly, giving your full chain of title.

Fourteenth. By what right and by what authority and upon what claim or right did you go before the officers of the United States land office at Central City, Colorado, and institute and prosecute proceedings to obtain for yourself alone the patent to the said Wallace Lode mining claim to the exclusion of A. A. K. Sawyer, Alice E. Finch, Amos Sawyer, Marcus Finch, and John S. Sanderson or either or any of them? State fully and exactly.

Fifteenth. Was you on or about the 18th day of December, A. D. 1884, the legal owner of the judgment in favor of Charles Christianson, as set forth in "Exhibit 5," against the said John S. Sanderson, P. T. Smith, and Marcus Finch, and did you or did you not on or about said date direct the sheriff of said Clear Creek county, State of Colorado, to levy the execution issued upon said judgment

upon the interest of the said John S. Sanderson, P. T. Smith, and Marcus Finch of, in, and to said Wallace lode?

Sixteenth. Was you on or about the 19th day of December, A. D. 1884, the legal owner of the judgments in favor of William Hunter, as set forth in "Exhibit 6," against the said John S. Sanderson and P. T. Smith, and did you or did you not on or about said date direct the sheriff of said Clear Creek county, State of Colorado, to levy the executions issued upon said judgments upon the interest of the said John S. Sanderson and P. T. Smith of, in, and to said Wallace lode?

Seventeenth. Did you or did you not attend the sheriff's sale held on January 12th, A. D. 1885, at the front door of the court-house, in Georgetown, Clear Creek county, State of Colorado, under the said executions issued upon the said judgments in favor of Charles Christianson and William Hunter (for the use of Robert Turner)
33 and against the said John S. Sanderson, P. T. Smith, and Marcus Finch, as set forth in "Exhibits 5 and 6" herein, and was or was you not a bidder at said sheriff's sale? If your answer is yea, you will please state the name of the purchaser of the interest of the said John S. Sanderson, P. T. Smith, and Marcus Finch at said sale under the execution issued upon the Christianson judgment and the amount bid therefor. You will also state the name of the purchaser of the interest of the said John S. Sanderson and P. T. Smith under the executions issued upon the Hunter judgments and the amount bid therefor.

Eighteenth. Who, if any one, have become your grantees of any interest and what particular interest in said Wallace lode?

That your orator's interest in said Wallace lode may be adjudged and decreed to be an undivided five-eighths thereof ($\frac{5}{8}$).

That said deed made to the said Robert Turner by the sheriff of said Clear Creek county, Colorado, under said certificate of sale issued to the said A. K. White and assigned to the said Robert Turner as aforesaid under the execution in favor of the said John F. Teal and against the said John S. Sanderson, Pierce T. Smith, and Marcus Finch, dated March 3rd, A. D. 1885, and hereinbefore set forth and made a part thereof as "Exhibit 10," be declared to be null and void, of no effect, and held for naught.

That the notice of forfeiture published by the said Robert Turner against your orator under the provisions of said section 2324 of the Revised Statutes of the United States, as hereinbefore set forth, and all and every proceeding thereunder be declared and decreed to be null and void and of no effect and held for naught.

That the defendants be ordered to make a full and com-
34 plete accounting to your orator under the interlocutory decree of this court concerning the amount in value of ores and minerals mined and extracted by them and each of them from the said Wallace lode and the expenses of mining, extracting, hauling, milling, smelting, and all other charges and expenses attendant on preparing and fitting the same for sale.

That the defendants may be ordered and decreed to pay over to your orator five-eighths of the net proceeds of all ores and minerals

mined and extracted by them and each of them from said Wallace lode.

That the receiver's receipt, so called, issued by the receiver of the United States land office at Central City, Colorado, to the said Robert Turner, as hereinbefore set forth, be set aside and held for naught.

That in the event a patent for said Wallace lode is issued to the said Robert Turner upon his said application therefor, now pending — the office of the Commissioner of the General Land Office of the United States, that the said Robert Turner be adjudged and decreed to be the trustee of the title for the use of your orator for an undivided five-eighths part of and interest in the said Wallace lode, and that he be directed by the decree of this court to convey to your orator by proper and ample deed or deeds an undivided five-eighths of the said Wallace lode, and that in default thereof your orator may have leave to record in the office of the recorder in and for said Clear Creek county, Colorado, a certified copy of the decree of this court in this cause, and that the same, when so recorded, shall stand and be in lieu of and have the same effect as a conveyance from the said Robert Turner to your orator.

35 That a receiver may be appointed by this court to take possession of, manage and control, mine and work, said Wallace lode under the orders and directions of this court from time to time made, as may become necessary, and until discharged by the final order and decree of this court.

That the defendants and each of them, their agents and attorneys, their servants and employees, be restrained and enjoined from conveying, encumbering, or in any manner disposing of the said Wallace lode, and from working, mining, or interfering therewith or any part thereof, and from taking and removing therefrom any ores or minerals already mined therefrom until the relative rights and interests therein of your orator and the said defendants shall be settled and determined, and that your orator may have such other and further relief in the premises as the nature of this case shall require and as to this honorable court shall seem meet.

May it please the court to grant unto your orator the writ of injunction issuing out of and under the seal of this court, to be directed to the said defendants, their agents and attorneys, servants and employees, firmly restraining and enjoining them as hereinabove prayed.

May it please the court to grant also unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Robert Turner, J. S. Allison, and George E. McClelland, therein and thereby commanding them and each of them, at a certain time and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there full, true, and direct answer make to all and singular the premises, and, further, stand to, perform, and abide such

36 further orders, directions, and decree therein as to this honorable court shall seem meet.

And your orator will ever pray, etc.

ALFRED A. K. SAWYER,
By MARCUS FINCH,
*His Att'y-in-Fact.*

BALLARD & BUTLER,
*Solicitors for Complainant.*
C. P. BUTLER, *Of Counsel.*

STATE AND DISTRICT OF COLORADO, } ss:
*Arapahoe County,* }

On this 17th day of March, A. D. 1887, personally appeared before me Marcus Finch, who, being duly sworn, deposes and says that he is the agent of the said Alfred A. K. Sawyer, the complainant herein, and makes oath that he has heard the foregoing bill of said Alfred A. K. Sawyer subscribed by him read; that he knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be upon the information and belief of complainant, and as to those matters he believes it to be true; that he makes this jurat and subscribes this bill for the reason that said complainant, Alfred A. K. Sawyer, is not within the State of Colorado; further, that the matters and things mentioned in said bill are more particularly within the knowledge of him, the said Marcus Finch, than within the knowledge of him, the said Alfred A. K. Sawyer.

MARCUS FINCH.

Subscribed and sworn before me this 17th day of March, 1887.

FRED. E. BUTLER,
[SEAL.] *Notary Public, Arapahoe County, Col.*

37 EXHIBIT "A."

Know all men by these presents that I, John Clark, of the county of Clear Creek and State of Colorado, have this 20th day of September, 1879, claimed by right of discovery and location fifteen hundred feet, linear and horizontal measurement, on the Wallace lode, along the vein thereof, with all its dips, variations, and angles, together with seventy-five feet in width on each side of the middle of said vein at the surface, and all veins, lodes, ledges, and surface ground within the lines of said claim, forty feet on said lode being n'easterly from the center of discovery shaft and twelve hund. and six feet being s'westerly from said center of discovery shaft—

Said lode being situated in Cascade mining district, county of Clear Creek and State of Colorado, and more particularly described as follows, to wit: Beginning at N. W. cor. of location, from which cor. No. 4, sur. No. 428, bears S. 56° E. 44′; thence S. 38° W. 626′ to west center post; thence S. 38° W. 620′ to s'west corner of location; thence S. 52° E. 150′ to s'east cor., whence pine tree 10″ in diam., blazed and marked "B. T. Wallace lode," bears S. 57° W. 2′ and

pine tree 13″ in diam., blazed and marked as above, bears N. 26° W. 11.3′; thence N. 38° E. 620′ to east center post; thence on same course 626′ farther to N. E. cor.; thence N. 52° W. 150′ to N. W. cor.—beginning.

Boundaries are marked by six substantial posts, as required by law. All above bearings are magnetic.

Dated this 1st day of October, 1879.

JOHN CLARK.

Attest: MARCUS T. MORRILL.

38 Filed for record 6th day of October, 1879, at 3 o'clock p. m.
S. S. HORTON, *Recorder.*

* * * * * * *

(Indorsed:) Exhibit "A." Certified copy of location certificate of Wallace lode, Cascade district. Recorded in Book 47, page 138.

EXHIBIT "B."

This indenture, made the 19th day of November, in the year of our Lord one thousand eight hundred and seventy-nine, between John Clark, of the county of Clear Creek and State of Colorado, of the first part, and Henry C. Scoville, of the county and State aforesaid, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one & $\frac{}{100}$ dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and
39 quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever the following-described premises, to wit, the Wallace lode, situated in Cascade mining district, county of Clear Creek and State of Colorado, consisting of fifteen hundred feet along the vein thereof by seventy-five in width on each side of the middle of said vein; and for a more full and particular description of the said Wallace lode reference is hereby made to the location certificate of said lode, recorded the 6th day of October, A. D. 1879, at 3 o'clock p. m., in Book 47, page 138, in the recorder's office at Georgetown, Colorado, and said location certificate is hereby made part and parcel of this instrument, together with all and singular the tenements, hereditaments, and appurtenances hitherto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said

party of the second part, his heirs, administrators, executors, and assigns forever.

In testimony whereof the said party of the first part has hereunto set his hand and his seal the day and year first above written.

JOHN CLARKE. [SEAL.]

(Duly acknowledged.)

* * * * * * *

40 Filed for record January 5th, 1880, at 12½ o'clock p. m.
S. S. HORTON, *Recorder.*

* * * * * * *

41 (EXHIBIT "C.")

This indenture, made the 28 day of June, in the year of our Lord one thousand eight hundred and eighty, between Henry C. Scoville, of Clear Creek county, Colorado, of the first part, and John Clark, of same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents doth remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever the following-described premises, to wit, the "Wallace" lode, situate in Cascade mining district, Clear Creek county, Colorado, as located and recorded in Book 47, page 138, of said Clear Creek county records, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In testimony whereof the said party of the first part has hereunto set his hand and his seal the day and year first above written.

HENRY C. SCOVILLE. [SEAL.]

(Duly acknowledged.)

* * * * * * *

42 Filed for record July 13th, 1880, at 6 o'clock p. m.
S. S. HORTON, *Recorder.*

* * * * * * *

43 "EXHIBIT D."

This indenture, made the twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-two, between John Clarke, of the county of Clear Creek and State of Colorado, party of the first part, and Marcus Finch and Amos Sawyer, of the county of Arapahoe and State of Colorado, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand ($5,000.00) dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said parties of the second part and to their heirs and assigns an undivided three-fourths (¾) interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges
44 thereto incident, unto the said parties of the second part, their heirs and assigns forever.

And the said party of the first part, for himself, his heirs and executors, administrators and assigns, covenants to and with the said parties of the second part, their heirs and assigns, that he will warrant and defend the title to said premises *or* against the claims of all persons except the United States of America.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN CLARKE. [SEAL.]

(Duly acknowledged.)

* * * * * * *

45 [Endorsed:] "Exhibit D." Mining deed. John Clarke to Marcus Finch — Amos Sawyer, ¾ Wallace lode.

STATE OF COLORADO, }
*Clear Creek County,* } ss:

I hereby certify that this instrument was filed for record in my office at 9¼ o'clock a. m. August 28th, 1882, and is duly recorded in Book 69, page No. 62.

F. L. PECK,
*Clerk and Recorder.*

(EXHIBIT "E.")

Certified copy.

This deed, made this twenty-fifth day of October, A. D. 1882, between John Clarke, of Clear Creek county, State of Colorado, party of the first part, and William Hunter, of the county of Clear Creek, State of Colorado, party o the second part, witnesseth:

That whereas the said party of the first part, by his certain deed bearing date on or about the ninth day of February, A. D. 1882, did convey unto the said party of the second part an undivided one-fourth interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado; and whereas said deed has been lost or destroyed and the said party of the first part is desirous of vesting the title to an undivided one-fourth interest in and to the above-described property in said party of the second part:

Now, therefore, in consideration of the premises and one dollar to the said party of the first part in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, the said party of the first part hereby sells, conveys, and quitclaims unto the said party of the second part, his heirs and assigns, an undivided one-fourth interest in and to the Wallace lode, situate in the Cascade mining district, Clear Creek county, State of Colorado;

46 to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN CLARK. [SEAL.]

(Duly acknowledged.)

* * * * * * *

Recorded November 6th, 1882, at 2 o'clock p. m.

F. L. PECK, *Recorder.*

* * * * * * *

47 (EXHIBIT "F.")

This indenture, made the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and eighty-two, between Marcus Finch and Amos Sawyer, of the county of Arapahoe and State of Colorado, parties of the first part, and John Clarke, of the county of Clear Creek and State of Colorado, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of four thousand ($4,000.00) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby

acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-half interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, together with all the dips,
48 spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurten-ces and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MARCUS FINCH. [SEAL.]
AMOS SAWYER. [SEAL.]

(Duly acknowledged.)

* * * * * * *

49 I hereby certify that this instrument was filed for record in my office at 2½ o'clock p. m. November 8th, 1882, and is duly recorded in Book 69, page No. 106.

F. L. PECK,
*Clerk and Recorder.*

(EXHIBIT "G.")

Know all men by these presents that we, John Clark and William Hunter, of the county of Clear Creek, in the State of Colorado, reposing special trust and confidence in Pierce P. Smith, of the county of Arapahoe, in the State of Colorado, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, the said Pierce P. Smith our true and lawful attorney, for us and in our name, place, and stead, for our sole use and benefit, to sell an undivided three-fourths (¾) interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, to sign a deed for the same for the sole use and benefit of the said parties of the first part—

Hereby giving and granting unto our said attorney full
50 power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attor-

ney or his substitutes shall lawfully do or cause to be done by virtue hereof.

In witness whereof we have hereunto set our hands and seals this twenty-sixth day of October, A. D. one thousand eight hundred and eighty-two.

JOHN CLARKE. [SEAL.]
WILLIAM HUNTER. [SEAL.]

(Duly acknowledged.)

* * * * * * *

[Endorsed:] "Exhibit G." Power of attorney. John Clark and William Hunter to P. P. Smith. Filed for record at 2½ o'clock p. m. November 8th, A. D. 1882. Recorded on page 344 of Book 67 of the records of Clear Creek county, Colorado. F. L. Peck, recorder.

51 (EXHIBIT "H.")

This indenture, made the eighth day of January, in the year of our Lord eighteen hundred and eighty-three, between Marcus Finch, of the county of Arapahoe and State of Colorado, party of the first part, and Alice E. Finch, of the county of Arapahoe and State of Colorado, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand ($1,000.00) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to her heirs and assigns an undivided one-eighth interest in and to the Wallace lode, situate in Cascade mining district, Clear Creek county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurten-ces; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, her heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

MARCUS FINCH. [SEAL.]

(Duly acknowledged.)

* * * * * * *

52 [Endorsed:] "Exhibit H." Mining deed. Marcus Finch to Alice E. Finch, und. ⅛ Wallace lode, Cascade mining district, Clear Creek Co.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

I hereby certify that this instrument was filed for record in my office at 1½ o'clock p. m. January 9th, 1883, and is duly recorded in Book 69, page No. 155. F. L. PECK, *Recorder.*

(EXHIBIT "I.")

This indenture, made the sixteenth day of March, in the year of our Lord eighteen hundred and eighty-three, between William Hunter and John Clarke, of the county of Clear Creek,
53 State of Colorado, by Pierce T. Smith, their attorney-in-fact (of the county of Arapahoe and State of Colorado), parties of the first part, and John S. Sanderson and Amos Sawyer, of the county of Arapahoe and State of Colorado, parties of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of seven hundred ($700.00) dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, *has* granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do*es* grant, bargain, sell, remise, release, and forever quitclaim, unto the said parties of the second part and to their heirs and assigns an undivided three-fourths interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said parties of the second part, their heirs and assigns forever.
54 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM HUNTER,
By PIERCE T. SMITH, [SEAL.]
*His Attorney-in-Fact.*
JOHN CLARK,
By PIERCE T. SMITH, [SEAL.]
*His Attorney-in-Fact.*

(Duly acknowledged.)

* * * * * * *

[Endorsed:] Exhibit "I." Mining deed. William Hunter, John Clarke, to John S. Sanderson, Amos Sawyer.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

I hereby certify that this instrument was filed for record in my office at 1 o'clock p. m. March 17th, 1883, and is duly recorded in Book 69, page No. 205.

F. L. PECK, *Recorder.*

55 (EXHIBIT "J.")

*Certificate of Sale.*

Certified copy.

I, John C. De Votie, sheriff of Clear Creek county, State of Colorado, do hereby certify that by virtue of four certain writs of execution issued out of and under the seal of the district court of the first judicial district in and for said county, each of said executions being issued on the 16th day of December, A. D. 1883, to me directed, against the goods and chattels, lands and tenements, of John Clark in said county, and in favor of George A. Patten for the sum of $165.85, with interest from the 1st day of August, 1882, & one execution in favor of Aaron Sands for the sum of $129.58, with interest from the 21st day of June, 1882; one in favor of Ira Hutchinson for the sum of $50.25, with interest from the 28th day of August, 1882; also one in favor of Henry Ellis & William Deemer for the sum of $68.16, with interest from the 21st day of June, A. D. 1882—interest, $29.24; cost, $66.16; accrued cost, $57.76; and principal sum, $413.64; aggregating full sum of 566.88—I levied on the following-described property, to wit, an undivided three-fourths interest in and to the Wallace lode, said lode situated, lying, and being in Cascade mining district, Clear Creek county, State of Colorado, all of said property situate, lying, and being in said Clear Creek county, State aforesaid; and by virtue of said execution I proceeded to sell the same at public vendue on the 2nd day of April, A. D. 1883, at 2 o'clock p. m. of that day, at the front door of the court-house in Georgetown, at which time John S. Sanderson bid the sum of five hundred & sixty-seven dollars for the interest of the said John Clark in and to said premises, which being the highest bid for the same, they were struck off and sold to the
56 said John S. Sanderson for five hundred & sixty-seven dollars, and the said John S. Sanderson, his heirs and assigns, will be entitled to a deed for the same at the expiration of nine calendar months from the date thereof, if not sooner redeemed according to law.

Georgetown, April 2d, 1883.

Amount of judgment, $566.80, including interest & cost.

JOHN C. DE VOTIE, [SEAL.]
*Sheriff of Clear Creek County.*

Recorded April 2nd, 1883, at 4¾ o'clock p. m.
F. L. PECK, *Recorder.*

* * * * * * *

(EXHIBIT "K.")

Whereas, on or about the sixteenth day of December, A. D. 1882, there was issued out of the district court of Clear Creek county, State of Colorado, four certain executions under judgments of record in said court against John Clark—one in favor of one Sands for the sum of one hundred twenty-nine & $\frac{58}{100}$ dollars, one in favor of one Patten for the sum of one hundred sixty-five & $\frac{85}{100}$ dollars, one in favor of one Hutchinson for the sum of fifty & $\frac{25}{100}$
57 dollars, and one in favor of Ellis & Deemer for the sum of sixty-eight & $\frac{16}{100}$ dollars, with interest and accruing costs thereon—which said executions were levied upon an undivided three-fourths (¾) interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, as the property of the said John Clark.

And whereas by his certain deed, bearing date on or about March tenth A. D. 1883, made to John S. Sanderson and Amos Sawyer, said Clark conveyed all his right, title, and interest in and to the said Wallace lode to the said Sanderson and Sawyer and the full amount due on said executions was deducted from the consideration paid to said Clark therefor;

And whereas, on or about the second day of April, A. D. 1883, the sheriff of said Clear Creek county, State of Colorado, under and by virtue of the executions aforesaid, offered the property levied upon thereunder at public sale, and the same was bid in by the said John S. Sanderson for himself and the said Amos Sawyer, and a certificate of sale issued therefor by the sheriff of said county to the said John S. Sanderson, which is duly recorded in the recorder's office of said Clear Creek county, State of Colorado:

Now, therefore, in consideration of the premises and of the sum of one dollar to me in hand paid, receipt of which is hereby acknowledged, I, the said John S. Sanderson, by these presents assign, transfer, and set over unto the said John Clark, for the use and benefit of his grantees in said Wallace lode, the said certificate of sale issued by the sheriff of said Clear Creek county, State of Colorado, as aforesaid.

58 Witness my hand and seal this twenty-first day of January, A. D. 1885.

JOHN S. SANDERSON. [SEAL.]

(Duly acknowledged.)

* * * * * *

[Endorsed:] "Exhibit K." Assignment of sheriff's certificate of sale. John S. Sanderson to John Clark.

RECORDER'S OFFICE.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

I hereby certify that the within instrument was filed for record on the 22nd day of January, 1885, at 10½ o'clock a. m., and recorded in Book No. 72, at page 117.

F. L. PECK, *Recorder.*

59 (EXHIBIT "L.")

This indenture, made the twelfth day of January, in the year of our Lord one thousand eight hundred and eighty-five, between Amos Sawyer, of the county of Arapahoe, State of Colorado, party of the first part, and Alfred A. K. Sawyer, of the county of Montgomery, State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-half interest in and to the Wallace lode, situate in the Cascade mining district, Clear Creek county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, or appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

60 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

AMOS SAWYER. [SEAL.]

(Duly acknowledged.)

* * * * * * *

[Endorsed:] "Exhibit L." Mining deed from Amos Sawyer to Alfred A. K. Sawyer.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

I hereby certify that this instrument was filed for record in my

office at 10 o'clock a. m., January 15th, 1885, and is duly recorded in Book 69, page No. 536.

F. L. PECK,
*Clerk and Recorder.*

61 EXHIBIT "M."

This indenture, made the sixteenth day of March, in the year of our Lord one thousand eight hundred and eighty-six, between Alfred A. K. Sawyer, of the county of Montgomery and State of Illinois, party of the first part, and Alice E. Finch, of the county of Arapahoe and State of Colorado, party of the second party, witnessth:

That the said party of the first part, for and in consideration of the sum of two thousand ($2,000.00) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to her heirs and assigns all right, title, and interest in and to the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, her heirs and assigns forever.

62 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALFRED A. K. SAWYER. [SEAL.]

(Duly acknowledged.)

* * * * * * *

[Endorsed:] Exhibit "M." Mining deed. A. A. K. Sawyer to Alice E. Finch. All interest — Wallace lode.

STATE OF COLORADO, *Clear Creek County,* } ss:

I hereby certify that this instrument was filed for record in my office at 9 o'clock a. m., March 22nd, 1886, and is duly recorded in Book 83, page No. 89.

B. C. CANTREN, JR.,
*Clerk and Recorder.*

63 (EXHIBIT "N.")

Certified copy.

This deed, made this third day of November, in the year of our Lord one thousand eight hundred and eighty-six (1886), between Alice E. Finch, of the county of Arapahoe and State of Colorado, of the first part, and Alfred A. K. Sawyer, of the county of Montgomery and State of Illinois, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand ($5,000.00) dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed and quitclaimed, and by these presents does remise, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part hath in and to the following-described real estate situate, lying, and being in the county of Clear Creek and State of Colorado, to wit, the Wallace lode, Cascade mining district:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ALICE E. FINCH. [SEAL.]

(Duly acknowledged.)

* * * * * * *

64 Filed for record at 12½ o'clock p. m., Dec. 18th, 1886.

B. C. CATREN, JR., *Recorder.*

* * * * * * *

65 (EXHIBIT "1.")

Certified copy.

IDAHO SPR'S, COLO., *Aug.* 13, 1883.

To Mr. John S. Sanderson, Mr. P. Smith, & Mr. Marcus Finch, & Mr. Sawyer, under the firm name of John S. Sanderson & Co.:

You are indebted to me in the sum of one hundred & forty-eight $\frac{10}{100}$ dollars for work and labor done by me on day's wages, under contract with you on the Wallace lode, in the Cascade mining district, in Clear Creek county, Colorado, for which sum I claim a lien on said mining claim which was recently worked by you.

J. F. TEAL.

STATE OF COLORADO, }
*County of Clear Creek,* } *ss:*

John F. Teal, being this day duly sworn by me, deposed and said that the sum of money mentioned in foregoing statement is justly due him from said John S. Sanderson, P. T. Smith, Marcus Finch, & —— Sawyer.

Aug. 13, 1883.

CHARLES P. BRYAN,
*Notary Public.*

[SEAL.]

Filed for record at 10½ o'clock a. m., August 14th, 1883.

F. L. PECK,
*County Clerk and Recorder.*

* * * * * * *

66 EXHIBIT "2."

STATE OF COLORADO, }
*County of Clear Creek,* } *ss:*

In the County Court.

JOHN F. TEAL, Plaintiff,
*vs.*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, and —— SAWYER, Defendants.

Be it remembered that on the 12th day of January, A. D. 1884, the said plaintiff, John F. Teal, filed his complaint in the above-entitled cause in said county court in words and figures as follows, to wit:

"STATE OF COLORADO, }
*County of Clear Creek,* } *ss:*

"In the County Court.

"JOHN F. TEAL, Plaintiff,
*vs.*
"JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, and —— SAWYER, Defendants.

"The plaintiff, John F. Teal, complains of the defendants, John S. Sanderson, P. T. Smith, Marcus Finch, and —— Sawyer, whose first name is to plaintiff unknown, and alleges:

"1. That the amount in controversy and the relief sought does not exceed in value the sum of two thousand dollars.

"2. That between the 7th day of May and the 14th day of July, A. D. 1883, the plaintiff worked and labored for defendants as a miner upon the Wallace Lode mining claim, situate in Cascade mining district, county of Clear Creek, State of Colorado, at defend-

ants' special instance and request, and at the agreed price of
67 three dollars per day, and that on the date last aforesaid defendants settled with plaintiff so far as ascertaining the amount due from defendants to plaintiff, at which settlement there was agreed between plaintiff and defendants that there was due plaintiff from defendants the sum of one hundred and forty-eight and $\frac{10}{100}$ dollars for said work and labor; that said work and labor commenced upon said May 7th, 1883, and the last work was done on said July 14th, 1883.

3. That no part of said indebtedness having been paid, to wit, on the 14th day of August, A. D. 1883, plaintiff, for the purpose of securing the same, made, signed, and swore to his notice to claim a lien upon said Wallace Lode mining claim, which said notice contained an abstract of said indebtedness showing the whole amount thereof, to wit, $148.10, the whole amount of credit, to wit, nothing, and the balance due plaintiff, to wit, $148.10, all of which was duly verified as aforesaid, and that said notice also contained a description of the property upon which plaintiff claimed said lien, to wit, said Wallace lode, in Cascade mining district, Clear Creek county, Colorado, and that said notice was filed with the clerk and recorder of said county on the day and date last aforesaid, and was duly recorded in Book No. 64, at page 13, of the public records of said county.

4. That at all times hereinbefore mentioned defendants were the owners of or claimed an interest in said Wallace lode.

Wherefore plaintiff prays judgment against said defendants—

1. For the sum of one hundred forty-eight and $\frac{10}{100}$ dollars and interest thereon from July 14, 1883, and for costs of this suit.

2. That plaintiff be adjudged and decreed to have a lien upon said Wallace lode from May 7th, 1883, for the amount of such judgment and costs.

68 3. That said property be decreed to be sold to satisfy such judgment and costs and accrued costs, and that such sale conform to sales upon execution issued from courts of record as nearly as may be.

4. That in case of such sale, and said property does not sell for sufficient to pay said judgment and costs and accrued costs, that execution may be issued against the real and personal property of defendants, as in cases of judgment for money demand only.

For such other and further relief as equity and good conscience may allow.

CANTLON & WHITE,
*Attorneys for Plaintiff.*

Afterward, on the same day, a summons was issued out and under the seal of said court, which was duly served upon the defendants, P. T. Smith, Marcus Finch, and John S. Sanderson, and returned into court on the twenty-first day of January, A. D. 1884; which said summons, with the returns thereon, is in words and figures as follows, to wit:

STATE OF COLORADO, *Clear Creek County,* } ss:

In the County Court of Clear Creek County, State of Colorado.

JOHN F. TEAL, Plaintiff,
*against*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, and —— SAWYER, Defendants.

The People of the State of Colorado send greeting to John S. Sanderson, P. T. Smith, Marcus Finch, and —— Sawyer (given name of Sawyer unknown), defendants above named:

69 You are hereby required to appear in an action brought against you by the above-named plaintiff in the county court of the State of Colorado in and for the county of Clear Creek, and to answer the complaint filed therein, within ten days, exclusive of the day of service, if served within this county, or, if served out of this county, but within this district, within twenty days, otherwise within forty days, or judgment by default will be taken against you, according to the prayer of the complaint.

This action is brought to recover the sum of one hundred and forty-eight and $\frac{10}{100}$ dollars, and interest thereon from July 14th, 1883, for labor done upon the Wallace Lode mining claim, in Cascade mining district, in Clear Creek county, Colorado, in the months of May and June and July, A. D. 1883, at your special instance and request, and also to foreclose a miner's lien upon said lode for said sum, and also to recover costs of suits, as will more fully appear by the complaint on file herein, to which reference is here made.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the court for the relief demanded in the complaint.

Given under my hand and the seal of the county court of Clear Creek county, State of Colorado, this twelfth day of January, A. D. 1884.

[SEAL.] LUKE PALMER,
*County Judge.*

STATE OF COLORADO, *Arapahoe County,* } ss:

I do hereby certify that I have duly executed the within summons this 15th day of January, A. D. 1884, by leaving a copy with P. T. Smith, Marcus Finch, and by leaving a copy with Mrs.
70 John S. Sanderson, wife of defendant, John S. Sanderson, and a member of his family, over the age of 15 years; and as to Amos Sawyer, not found in any county.

G. H. GRAHAM, *Sheriff,*
By W. G. WHEELER, *Deputy.*

(Indorsed:) No. 1572. John F. Teal, plaintiff, *vs.* John S. Sanderson *et al.*, defendants. Summons. Filed this twenty-first day of January, A. D. 1884. Luke Palmer, county judge.

Afterward, on the twenty-ninth day of February, A. D. 1884, proceedings were had in said cause in said county court and entered upon the records thereof in words and figures as follows, to wit:

JOHN F. TEAL
*v.*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, and AMOS SAWYER. } No. 1572.

On this day comes the plaintiff, John F. Teal, by Cantlon and White, his attorneys, and makes application for the default of the defendants served, to wit, John S. Sanderson, P. T. Smith, and Marcus Finch; and, it appearing to the court that the defendants next above named, though duly served with process, have failed to appear and answer, move, or demur, and the time for appearing and pleading having expired, the default of the said defendants is hereby entered.

LUKE PALMER,
*County Judge.*

Afterward, on the fourth day of March, A. D. 1884, further proceedings were had in said cause and entered upon the records of said court in words and figures as follows, to wit:

71 JOHN F. TEAL
*v.*
JOHN S. SANDERSON *et al.* } 1572.

On motion of plaintiff, this cause is set for hearing on March 6th, A. D. 1884.

Afterward, on the sixth day of March, A. D. 1884, the same being one of the regular juridical days of said March term, A. D. 1884, of said county court, further proceedings were had in said cause and entered upon the records of said court in words and figures as follows, to wit:

JOHN F. TEAL
*v.*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, and AMOS SAWYER. } 1572.

This cause coming on to be heard upon this 6th day of March, A. D. 1884, upon the complaint of plaintiff, taken as confessed by the defendants, John S. Sanderson, P. T. Smith, and Marcus Finch, whose default for not appearing and answering, moving, or demurring was heretofore entered, to wit, on February twenty-ninth, A. D. 1884;

And now, on this date, this cause coming on for further hearing on part of the plaintiff, and thereupon plaintiff introduced a due bill from defendants in open court showing the indebtedness of said defendants to said plaintiff, as set forth in said plaintiff's complaint, for work and labor performed on the Wallace lode, in Cascade

mining district, county and State aforesaid, being the property of said defendants and the same property described in plaintiff's complaint, and the court also finds that plaintiff filed his notice of miner's lien in manner and form as alleged in said complaint, and that there is now due plaintiff from said defendants, John S. Sanderson, P. T. Smith, and Marcus Finch, the sum of one hundred fifty-seven and $\frac{35}{100}$ dollars, for which said sum the plaintiff is entitled to a lien on the premises described in said complaint from May 7th, 1883:

It is therefore considered, adjudged, and decreed that plaintiff, John F. Teal, has a lien upon the interest of the said defendants in default in the following-described mining property, to wit: The Wallace lode, situate in Cascade mining district, Clear Creek county, State of Colorado, from the 7th day of May, A. D. 1883, for said sum of one hundred and fifty-seven and $\frac{35}{100}$ dollars and costs of suit.

72 That plaintiff, John F. Teal, have and recover of and from the said defendants the said sum of one hundred fifty-seven and $\frac{35}{100}$ dollars and costs of this suit.

That said mining property is subject to said lien and is hereby ordered to be sold by the sheriff of said county for the payment — said judgment and costs, and that a *venditioni exponas* be issued by the clerk of this court for the sale of said property described to said sheriff, and that such sale conform to sales upon execution issued from this court as nearly as may be.

That said sheriff is hereby authorized and empowered to execute, acknowledge, and deliver to the purchaser of said premises upon sale thereof all necessary certificates of sale and deeds in like manner as upon sales of real estate upon execution issued from this court.

That plaintiff is at liberty to bid and purchase at such sale.

That in case of such sale, and the premises do not bring sufficient to pay said judgment and costs and accrued costs, that plaintiff have an execution against said defendants for such residue as in other cases.

Afterward, on the ninth day of March, A. D. 1884, in pursuance of said judgment and decree an execution was issued out of and under the seal of said court, which was on the 25th day of June, A. D. 1884, returned into court with the return of the acts and doings of the sheriff indorsed thereon; which said execution and return of the sheriff is in words and figures as follows, to wit:

73 STATE OF COLORADO, } ss:
*Clear Creek County,* }

The People of the State of Colorado to the sheriff of Clear Creek county, Greeting:

We command you that of the goods and chattels, lands and tenements, of John S. Sanderson, P. T. Smith, and Marcus Finch, defendants, in your county you cause to be made the sum of one hundred and fifty-seven dollars and thirty-five cents, which John F.

Teal, plaintiff, lately in your county court of the first judicial district of said State within and for Clear Creek county, at a term thereof begun and holden at Georgetown on the first Monday in March, A. D. 1884, recovered against the said defendants, and which by our said court was adjudged to the said plaintiff for his damages, and also the further sum of nineteen dollars and seventy-five cents, which were adjudged to the said plaintiff for costs and charges in that behalf expended, whereof the said defendants stand convicted, as appears of record; and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Luke Palmer, judge of said court, at Georgetown, [SEAL.] in said county, and the seal thereof, this 9th day of March, A. D. 1884.

LUKE PALMER,
*County Judge.*

74 STATE OF COLORADO, } ss:
*Clear Creek County Court,* }

JOHN F. TEAL
*vs.*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH.

*Bill of Costs.*

| | |
|---|---|
| Judge's fees | $13 20 |
| Sheriff's fees | 6 55 |
| | $19 75 |

I hereby certify the foregoing to be a true statement from my fee book of plaintiff's costs.

LUKE PALMER,
[SEAL.] *County Judge.*

STATE OF COLORADO, } ss:
*Clear Creek County,* }

This writ came into my possession on the 9th day of May, A. D. 1884, at 6.30 o'clock p. m.

JNO. C. DE VOTIE, *Sheriff,*
By S. C. BENNETT, *Deputy.*

I have duly executed the within writ this 9th day of May, A. D. 1884, by levying upon the following-described property, to wit, the Wallace Lode mining claim, situate, lying, and being in Cascade mining district, Clear Creek county, State of Colorado, and taken as the property of the within-named defendants, John S. Sanderson, P. T. Smith, and Marcus Finch.

JOHN C. DE VOTIE, *Sheriff,*
By S. C. BENNETT, *Deputy.*

75 Adv't, May 10th, 1884; sale, June 2, '84, at 1 p. m. No. 1572. Execution *fieri facias*. County court. John F. Teal *vs.* John S. Sanderson *et al.*

Int., $3.75.

| | |
|---|---|
| Debt or damages | $157 35 |
| Costs | 19 75 |
| Accrued costs | 2 20 |
| Total amount | $179 30 |

The sheriff will collect interest from March 6th, 1884.

LUKE PALMER,
*County Judge.*

*Sheriff's Fees.*

On levy:

| | |
|---|---|
| Levying execution and record | $5 25 |
| Advertising property | 75 |
| Printer's fee | 7 25 |
| — miles' travel | 15 |
| Commission on $161.10 | 7 25 |
| Returning execution | 50 |
| Certificate of purchase & record | 3 75 |
| Total | $24 90 |

Filed this 25th day of June, A. D. 1884.

E. M. COLLINS,
*Clerk County Court.*
CANTLON & WHITE,
*Plaintiff's Attorneys.*

76 STATE OF COLORADO, } *ss:*
*County of Clear Creek,* }

I have further executed the within writ this 2d day of June, A. D. 1884, by selling the within-described property at public auction, after having advertised the same as according to law, and the same was struck off and sold to A. K. White for the sum of $207.95, that being the highest and best bid therefor, and of the said sum of $207.95 so bid I have disposed of the same as follows:

| | |
|---|---|
| P'd pl'ff herein judgment | $157 35 |
| " " " interest | 3 75 |
| " costs court | 19 75 |
| " " " accrued | 2 20 |
| " " sh'ff, printer, & recorder | 24 90 |
| | $207 95 |

And I return this writ satisfied.

JOHN C. DE VOTIE, *Sheriff,*
By S. C. BENNETT, *Deputy.*

I, Luke Palmer, county judge & clerk of the county court of Clear Creek county, in the State aforesaid, do hereby certify the above and foregoing to be true, perfect, and complete copies of the complaint, summons, & return thereon, together with all orders and the decree and execution and return thereon, in a certain cause heretofore pending in said court, wherein John F. Teal was plaintiff and John S. Sanderson, P. T. Smith, and Marcus Finch were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Georgetown, this fourth day of March, A. D. 1887.

[SEAL.] LUKE PALMER,
*County Judge & Clerk.*

77 (Indorsed:) "Exhibit 2." Transcript of proceedings in suit, county court, Clear Creek county, in the matter of John F. Teal *vs.* John S. Sanderson *et al.*

(EXHIBIT "3.")

I, John C. De Votie, sheriff of Clear Creek county, State of Colorado, do hereby certify that, by virtue of a writ of execution issued out of and under the seal of the county court of the first judicial district in and for said county, at the March term, A. D. 1884, said execution being issued on the 9th day of March, A. D. 1884, to me directed, against the goods and chattels, lands and tenements, of John S. Sanderson, P. T. Smith, and Marcus Finch in said county and in favor of John F. Teal, I levied on the following-described property, to wit, the Wallace Lode mining claim, all of said property situate, lying, and being in Cascade mining district, Clear Creek county, State aforesaid; and by virtue of said execution I proceeded to sell the same at public vendue on the 2nd day of June, A. D. 1884, at 1 o'clock p. m. of that day, in front of the court-house, in Georgetown, at which time A. R. White bid the sum of two hundred & seven dollars & ninety-five cents for the interest of the said John S. Sanderson, P. T. Smith, and Marcus Finch in and to said premises, which being the highest bid for the same they were struck off and sold to the said A. K. White for two hundred & seven dollars & ninety-five cents, $207.95 *dollars*, and the said A. K. White, his heirs or his assigns, will be entitled to a deed for the same at the expiration of nine calendar months from the date thereof, if not sooner redeemed according to law.

78 Georgetown, June 2d, 1884.
Amount of judgment, $157.35.

JOHN C. DE VOTIE,
*Sheriff of Clear Creek County,*
By S. C. BENNETT, *Deputy.*

Filed for record the 25th day of June, 1884, at 12¾ o'clock p. m.
F. L. PECK, *Recorder.*

* * * * * * *

(EXHIBIT "4.")

Certified copy.

IDAHO SPRINGS, COLORADO, *Aug.* 13, 1883.

To John S. Sanderson, P. T. Smith, Marcus Finch, —— Sawyer, under the firm name of John S. Sanderson & Co.:

You are indebted to me in the sum of two hundred & twenty-seven $\frac{95}{100}$ dollars ($227.95) for work and labor done by me under a contract with you at day's wages on the Wallace Lode mining claim, recently worked by you, in the Cascade mining district, Clear Creek county, Colorado, for which sum I claim a lien on said mining claim as claimed to be owned & worked by said John S. Sanderson & Co.

CHARLES CHRISTIANSEN.

79 STATE OF COLORADO, } *ss:*
*County of Clear Creek,* }

Charles Christiansen, being this day duly sworn by me, deposed & said that the sum of money mentioned in foregoing statement is justly due him from said John S. Sanderson & Co., a firm claiming to own & work the Wallace Lode mining claim.

Aug. 13, 1883.

CHARLES P. BRYAN,
*Notary Public.*

[SEAL.]

Filed for record at 10½ o'clock a. m. August 14th, 1883.

F. L. PECK,
*County Clerk and Recorder.*

* * * * * * *

(EXHIBIT "5.")

STATE OF COLORADO, } *ss:*
*County of Clear Creek,* }

In the County Court.

CHARLES CHRISTIANSEN
*vs.*
JOHN S. SANDERSON, P. T. SMITH, MARCUS FINCH, AND AMOS SAWYER. } 1592.

80 On this 18th day of July, 1884, the court being in judicial session, being the day and hour set for the hearing of said cause, this cause came on for trial upon the complaint of plaintiff, and it appearing to the court that summons had been duly served upon John S. Sanderson, P. T. Smith, and Marcus Finch, and that said defendants failed to plead, answer, or demur to the complaint

filed herein within the time prescribed by law, therefore, upon motion of plaintiff, the default of the said defendants is entered herein; and thereupon and on the day and hour last aforesaid, plaintiff and his said counsel being present, the court proceeded to hear said cause; and thereupon the plaintiff, Charles Christiansen, was sworn and examined, and plaintiff also produced in evidence his notice of lien, the same set forth and described in his said complaint. After hearing all the testimony and being duly advised in the premises the court finds the equities in favor of the plaintiff, and that all the allegations in said complaint are true; that the defendants, John S. Sanderson, P. T. Smith, and Marcus Finch, are justly indebted to plaintiff in the sum of two hundred fifty-five and $\frac{15}{100}$ ($255.15) dollars, and plaintiff filed and recorded his lien notice as alleged in his complaint.

It is therefore considered, adjudged, and decreed by the court, 1st, that the plaintiff have and recover of and from the defendants, John S. Sanderson, P. F. Smith, and Marcus Finch, the sum of two hundred fifty-five and $\frac{15}{100}$ ($255.15) dollars and costs of this suit; 2nd, that said sum is a lien upon the Wallace Lode mining claim, situate in Cascade mining district, Clear Creek county, State of Colorado, from March 21st, 1883; 3rd, that an execution be issued under the seal of this court commanding the sheriff of this county to sell all the right, title, and interest of the said defend-
81 & 82 ants, John S. Sanderson, P. F. Smith, and Marcus Finch, in and to the Wallace Lode mining claim according to law to ratify and pay said judgment and costs, and that said sale conform to sales upon execution issued out of this court as nearly as may be, and that plaintiff may bid at such sale the same as a stranger; 4th, that upon such sale and a failure to redeem therefrom within the time prescribed by law the sheriff of said county is authorized and empowered to execute, acknowledge, and deliver a deed conveying to the purchaser all the right, title, and interest of the said defendants, John S. Sanderson, P. F. Smith, and Marcus Finch, in said premises according to law; 5th, that in the event of a sale of said property and the proceeds thereof should not be sufficient to pay said judgment and costs, then and in such event the plaintiff shall be entitled to an execution against the property, real and personal, of defendants, said John S. Sanderson, P. F. Smith, and Marcus Finch, to ratify and pay such residue the same as in cases of judgment for a money demand only.

By the court:

[COURT SEAL.] LUKER PALMER, [SEAL.]
*County Judge.*

* * * * * * *

83 & 84 (EXHIBIT "6.")

*Certified Copy Transcript of Judgment Docket.*

District Court.

No.: 6914.
Judgment debtors: Sanderson, John S., & Smith, P. F.
Judgment creditor: William Hunter.
Judgment: 200.00, 9.25, 4.00.
Time of entry: July 16, 1883.
Where entered in judgment book: Transcript book.
Motion for new trial & appeals, *was* taken: ——.
Judgment of appellate court: Sept. 17, 1883.
Satisfaction of judgment when entered: Execution to Clear Creek county.
Recorded May 31st, 1884, at 5½ o'clock p. m.

F. L. PECK, *Recorder*,
By GEO. W. KIRKLAND, *Deputy*.

STATE OF COLORADO, } *ss:*
*County of Arapahoe,* }

In the District Court of the Second Judicial District within and for the County of Arapahoe Aforesaid, the —— Term, A. D. 188–.

WILLIAM HUNTER, Plaintiff,
*vs.*
JOHN S. SANDERSON, P. F. SMITH, & MARCUS FINCH & AMOS SAWYER, Defendants.

I, Henry Sparnick, clerk of said court, do hereby certify that the above is a full, true, and correct transcript of the entries in the above-entitled action as the same appear in the judgment docket kept at my office.

In witness whereof I have hereunto set my hand and the seal of said court, at Denver, this 27th day of May, A. D. 1884.

[SEAL.] HENRY SPARNICK, *Clerk*,
By —— ——, *Deputy Clerk*.

85 & 86 (EXHIBIT "6.")

*Certified Copy Transcript of Judgment Docket.*

District Court.

No.: 6915.
Judgment debtors: Sanderson, John S., & P. F. Smith.
Judgment creditor: William Hunter.
Judgment: 200.00, 9.25, 4.00.
Time of entry: July 16, 1883.
Where entered in judgment book: Transcript book.

Motion for new trials and appeals, when taken: ——.
Judgment of appellate court: Sept. 17, 1883.
Satisfaction of judgment when entered: Execution to Clear Creek county.
Recorded May 31st, 1884, at 5½ o'clock p. m.

F. L. PECK, *Recorder*,
By GEO. W. KIRKLAND, *Deputy*.

STATE OF COLORADO, *County of Arapahoe*, } ss:

In the District Court of the Second Judicial District within and for the County of Arapahoe Aforesaid, the —— Term, A. D. 188–.

WILLIAM HUNTER, Plaintiff,
*vs.*
JOHN S. SANDERSON, P. F. SMITH, MARCUS FINCH, & AMOS SAWYER, Defendants.

I, Henry Sparnick, clerk of said court, do hereby certify that the above is a full, true, and correct transcript of the entries in the above-entitled action as the same appear in the judgment docket kept at my office.

In witness whereof I have hereunto set my hand and the seal of said court, at Denver, this 27th day of May, A. D. 1884.

[SEAL.] HENRY SPARNICK, *Clerk*,
By —— ——, *Deputy Clerk*.

87 (EXHIBIT "7.")

Certified copy.

William Hunter
to
Robert Turner.

Transcript of the following judgments recorded on the 31st day of May, 1884, in the judgment records of Clear Creek county:

WM. HUNTER
*vs.*
J. S. SANDERSON, P. T. SMITH, MARCUS FINCH, AMOS SAWYER. } No. 6914.

Judgment for $200 of debt obtained in Justice Crotty's court for the payment of $200, with interest and costs, and filed in Arapahoe district court Sept. 17th, 1883.

WM. HUNTER
*vs.*
J. S. SANDERSON, P. T. SMITH, MARCUS FINCH, AMOS SAWYER.

Judgment for $200 of debt obtained in Justice Crotty's court for

the payment of $200, with interest and costs, and filed in Arapahoe district court Sept. 17th, 1883.

In consideration of four hundred dollars ($400) to me in hand paid, I do hereby assign, set over, and transfer to Robert Turner the two judgments above mentioned for his use and benefit, hereby authorizing him to collect and enforce the payment thereof in my name or otherwise, but at his own cost, and covenanting that the sum of $400, with the interest from the date of judgment, be-
88 sides the costs, is due thereon.

In witness whereof I have hereunto set my hand and seal this 27th day of August, 1884.

WILLIAM HUNTER. [SEAL.]

In presence of—
R. B. TURNER.

Recorded August 28th, 1884, at 1 o'clock p. m.
F. L. PECK, *Recorder*,
By GEO. W. KIRKLAND, *Deputy*.

* * * * * * *

(EXHIBIT "S.")

I, John C. De Votie, sheriff of Clear Creek county, State of Colorado, do hereby certify that by virtue of a writ of execution issued out of and under the seal of the county court of the first judi-
89 cial district in and for said county, at the June term, A. D. 1884, said execution being issued on the 17th day of December, A. D. 1884, to me directed, against the goods and chattels, lands and tenements, of John S. Sanderson, P. F. Smith, & Marcus Finch in said county and in favor of Charles Christiansen for the use of Robert Turner, assignee, I levied on the following-described property, to wit:

All the interest of the within-named John S. Sanderson, P. F. Smith, & Marcus Finch in the Wallace Lode mining claim.

All of said property situate, lying, and being in Cascade mining district, Clear Creek county, State aforesaid; and by virtue of said execution I proceeded to sell the same at public vendue, on the 12th day of January, A. D. 1885, at 1 o'clock p. m. of that date, in front of the court-house, in Georgetown, at which time Robert Turner bid the sum of three hundred & nineteen dollars & thirty cents for the interest of the said John S. Sanderson, P. F. Smith, & Marcus Finch in and to said premises; which being the highest bid for the same, they were struck off and sold to the said Robert Turner for three hundred & nineteen dollars & thirty cents ($319.30), and the said Robert Turner & his heirs or his assigns will be entitled to a deed for the same at the expiration of nine calendar months from the date thereof, if not sooner redeemed according to law.

Georgetown, January 12th, 1885.
Amount of judgment, $255.15.

JOHN C. DE VOTIE,
*Sheriff of Clear Creek County*,
By S. C. BENNETT, *Deputy*.

90 Filed for record the 13th day — January, 1885, at 12¾ o'clock p. m.

F. L. PECK, *Recorder.*

* * * * * * *

(EXHIBIT "9.")

I, John C. De Votie, sheriff of Clear Creek county, State of Colorado, do hereby certify that by virtue of a writ of execution *fi. fa.* on transcript of judgment issued out of and under the seal of the district court of the second judicial district in and for Arapahoe county, Colorado, A. D. 1884, said execution being issued on the 17th day of December, A. D. 1884, to me directed, against the goods and chattels, lands and tenements, of John S. Sanderson and P. F. Smith or P. T. Smith, in said county of Clear Creek and in favor of William Hunter, I levied on the following-described property, to wit:

91 All the right, title, and interest of the within-named John S. Sanderson and P. F. Smith or P. T. Smith in and to the Wallace Lode mining claim.

All of said property situate, lying, and being in Cascade mining district, Clear Creek county, State aforesaid; and by virtue of said execution I proceeded to sell the same at public vendue, on the 12th day of January, A. D. 1885, at 1 o'clock p. m. of that day, in front of the court-house, in Georgetown, at which time Robert Turner bid the sum of two hundred & eight dollars & thirty-eight cents for the interest of the said John S. Sanderson and P. F. Smith or P. T. Smith in and to said premises; which being the highest bid for the same, they were struck off and sold to the said Robert Turner for two hundred & sixty-eight dollars & thirty-eight cents ($268.38), and the said Robert Turner, his heirs or his assigns, will be entitled to a deed for the same at the expiration of nine calendar months from the date thereof, if not sooner redeemed according to law.

Georgetown, January 12th, 1885.

Amount of judgment, $200.00.

JOHN C. DE VOTIE,
*Sheriff of Clear Creek County,*
By S. C. BENNETT, *Deputy.*

Filed for record the 13th day of January, 1885, at 12¾ o'clock p. m.

F. L. PECK, *Recorder.*

* * * * * * *

92 EXHIBIT "9." (2.)

I, John C. De Votie, sheriff of Clear Creek county, State of Colorado, do hereby certify that by virtue of a writ of execution *fi. fa.* on transcript of judgment issued out of and under the seal of the district court of the second judicial district in and for Arapahoe county,

Colorado, A. D. 1884, said execution being issued on the 17th day of December, A. D. 1884, to me directed, against the goods and chattels, lands and tenements, of John S. Sanderson and P. F. Smith or P. T. Smith, of Clear Creek, in said county, and in favor of William Hunter, I levied on the following-described property, to wit: All the right, title, and interest of the within-named John S. Sanderson and P. F. Smith or P. T. Smith in and to the Wallace Lode mining claim.

All of said property situate, lying, and being in Cascade mining district, Clear Creek county, State aforesaid; and by virtue
93 of said execution I proceeded to sell the same at public vendue, on the 12th day of January, A. D. 1885, at 1 o'clock p. m. of that day, in front of the court-house, in Georgetown, at which time Robert Turner bid the sum of two hundred & sixty-eight dollars & thirty-eight cents for the interest of the said John S. Sanderson and P. F. Smith or P. T. Smith in and to said premises; which being the highest bid for the same, they were struck off and sold to the said Robert Turner for two hundred & sixty-eight dollars & thirty-eight cents ($268.38), and the said Robert Turner, his heirs or his assigns, will be entitled to a deed for the same at the expiration of nine calendar months from the date thereof, if not sooner redeemed according to law.

Georgetown, January 12th, 1885.

Amount of judgment, $200.00.

JOHN C. DE VOTIE,
*Sheriff of Clear Creek County,*
By S. C. BENNETT, *Deputy.*

Filed for record the 13th day of January, 1885, at 12¾ o'clock p. m.
F. L. PECK, *Recorder.*

* * * * * * *

94 "EXHIBIT 10."

Whereas John F. Teal did, at the March term, A. D. eighteen hundred and eighty-four, of the county court for the county of Clear Creek, in the State of Colorado, recover a judgment against John S. Sanderson, P. T. Smith, & Marcus Finch for the sum of one hundred and fifty-seven dollars and $\frac{35}{100}$ and the costs of suit, upon which judgment an execution was, dated on the ninth day of March, A. D. eighteen hundred and eighty-four, directed to John C. De Votie, the sheriff of Clear Creek county, to execute, and by virtue of such execution John C. De Votie, then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to A. K. White, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law;

And the said A. K. White having duly assigned his certificate of purchase to Robert Turner:

Now, therefore, know all by this deed that I, John C. De Votie, the sheriff of said county of Clear Creek and State of Colorado, for and

in consideration of the premises, have granted, bargained, and sold and do hereby convey to the said Robert Turner and to his heirs and assigns the following-described tract or tracts of land, to wit:

The Wallace Lode mining claim, situated, lying, and being in Clear Creek county, in the Cascade mining district and the State of Colorado:

To have and to hold the said described premises, with all the appurtenances thereunto belonging, to the said Robert Turner and to his heirs and assigns forever.

95 Witness my hand and seal this third day of March, in the year of our Lord one thousand eight hundred and eighty-five.

JOHN C. DE VOTIE, [SEAL.]
*Sheriff of Clear Creek County.*

* * * * * * *

Recorded March 3d, A. D. 1885, at 11½ o'clock a. m.
F. L. PECK, *Recorder*,
By GEO. W. KIRKLAND, *Deputy*.

* * * * * * *

96 (EXHIBIT "11.")

Certified copy.

*Miners' Lien Notice.*

IDAHO SPRINGS, COLO., *Jan'y 26th*, 1885.

To J. S. Sanderson, Amos Sawyer, & Alice E. Finch:

You are indebted to me in the sum of one hundred dollars for the annual assessment work done by me under a contract with R. Turner, assignee of certificate of purchase and judgment creditor, on the Wallace lode, located in Cascade mining district, Clear Creek county, in the State of Colorado, for which sum I claim a lien on said Wallace lode.

WASHINGTON JOHNSON.

97 STATE OF COLORADO, }
*Clear Creek County,* } *ss:*

Washington Johnson, being this day duly sworn by me, deposed and said that the sum of money mentioned in the foregoing statement is justly due him from said Sanderson & Co.

[SEAL.] JNO. F. TOURTELLOTTE,
*Notary Public.*

IDAHO SPRINGS, COLO., *Jan'y 26th*, 1885.

For value received I hereby assign, transfer, and set over all my right, title, and interest in and to the within claim to John W. Ward, of Idaho Springs, Colo., and do hereby authorize the said John W.

Ward to collect the same either by suit or otherwise and to do any and all acts lawful and necessary to obtain a settlement of the same.

Witness my hand & seal this 26th day of Jan'y, 1885.

WASHINGTON JOHNSON. [SEAL.]

In presence of—
JNO. F. TOURTELLOTTE.

Recorded January 27th, 1885, at 2½ o'clock p m.

F. L. PECK, *Recorder.*

* * * * * * *

98 (EXHIBIT "12.")

Certified copy.

STATE OF COLORADO, } ss:
*County of Clear Creek,* }

I, P. Mixsell, do hereby certify that I am the proprietor and publisher of the Idaho Springs News, a weekly newspaper published in Idaho Springs, in Clear Creek county, Colorado, and that the annexed notice was published in said paper once each week for 14 consecutive weeks, the first publication being on the 24th day of April, A. D. 1885, and the last publication being on the 24th day of July, A. D. 1885.

P. MIXSELL.

Subscribed and sworn to before me this 31st day of July, A. D. 1885.

[NOTARY SEAL.] HENRY BOWMAN,
*Notary Public.*

*Forfeiture Notice.*

To A. A. K. Sawyer, residence unknown:

You are hereby notified that I have performed the annual labor required by law for the year 1884 upon the Wallace lode, situate in Cascade mining district, Clear Creek county, Colorado, and that unless within the time prescribed by law you pay your proportionate amount of said expenditure your interest in said lode will be forfeited to me under the provisions of sec. 2324 of the Revised Statutes of the United States.

ROBERT TURNER.

99 (EXHIBIT "13.")

IDAHO SPRINGS, COLO., *April* 24, 1885.

1st pub. April 24, 1885.

STATE OF COLORADO, } ss:
*County of Clear Creek,* }

Robert Turner, being duly sworn, saith that A. A. K. Sawyer, the

person named in the forfeiture notice attached to the within proof of publication, wholly failed to comply with the demand contained in said notice during the period of said notice or within ninety days thereafter.

ROBERT TURNER.

Sworn and subscribed to before me this 27th day of October, A. D. 1885.

(NOTARY SEAL.) A. D. BULLIS,
*Notary Public.*

Recorded October 28th, 1885, at 1 o'clock p. m.
F. L. PECK, *Recorder*,
By GEO. W. KIRKLAND, *Deputy*.

* * * * * * *

100 (EXHIBIT "14.")

*N. Duplicate Receiver's Receipt.*

(Duplicate to be given the purchaser.)

Mineral entry No. 3013, lot No. 2256.

UNITED STATES LAND OFFICE AT
CENTRAL CITY, COLORADO, *April 13th*, 1886.

Received from Robert Turner the sum of twenty (20) dollars, the same being payment in full for the area embraced in that mining claim known as the Wallace lode, situated in southwest ¼ of sec. 6, t'p 4 S., R. 73 west, and southeast ¼ of sec. 1 and northeast ¼ of section 12, in township 4 south, of range No. 74 west, of 6th principal meridian, designated as lot No. 2256, said lot No. 2256 extending eleven hundred and ninety (1190) feet in length along said Wallace vein or lode, expressly excepting and excluding from this sale and entry all that portion of the ground embraced in mining claim or survey designated as lot No. 2217, Argonant lode, and also all that portion of any vein or lode the top or apex of which lies inside of said excluded ground, said lode mining claim as entered embracing 3.90 acres in the Cascade mining district, in the county of Clear Creek and State of Colorado, as shown by the survey thereof.

$20.00 E. W. HENDERSON, *Receiver*.

Filed for record this 15th day of April, A. D. 1886, at 11¾ o'clock a. m.

B. C. CATREN, JR., *Recorder*.

* * * * * * *

101 (EXHIBIT "15.")

This indenture, made this 20th day of April, in the year of our Lord one thousand eight hundred and eighty-six, between Robert Turner, of the county of Clear Creek and State of Colorado, party of

the first part, and J. S. Allison, of the county of Clear Creek and State of Colorado, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-fourth (¼) interest interest in and to the Wallace
102 lode, known U. S. survey No. 2256, situate in Cascade mining district, Clear Creek county, and State of Colorado; also an undivided three-sixteenths ($\frac{3}{16}$) interest in and to the Cecil lode, known as U. S. survey No. 428, situate in Cascade mining district, Clear Creek county, and State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ROBERT TURNER. [SEAL.]

* * * * * * *

103 Filed for record the 19th day of May, A. D. 1886, at 8¾ o'clock a. m.

B. C. CATREN, JR., *Recorder.*

* * * * * * *

104 (EXHIBIT "16.")

This indenture, made this 20th day of April, in the year of our Lord one thousand eight hundred and eighty-six, between Robert Turner, of the county of Clear Creek and State of Colorado, party of the first part, and George E. McClelland, of the county of Clear Creek and State of Colorado, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five thousand dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant,

bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part and to his heirs and assigns an undivided one-fourth ($\frac{1}{4}$) interest in and to the Wallace lode, known as U. S. survey No. 2256, situate in Cascade mining district, Clear Creek county, and State of Colorado; also an undivided three-sixteenths ($\frac{3}{16}$) interest in and to the Cecil lode, known as U. S. survey No. 428, situate in Cascade mining district, Clear Creek county, and State of Colorado, together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ROBERT TURNER. [SEAL.]

(Duly acknowledged.)

* * * * * * *

(Indorsed:) Mining deed. From Robert Turner to Geo. E. McClelland. Filed Mar. 17, 1887. Edward F. Bishop, clerk.

(Indorsed:) In the United States — court for the district of Colorado. In equity. Alfred A. K. Sawyer, compl't, *vs.* Robert Turner *et al.*, defendants. Bill of complaint. Filed Mar. 17, 1887. Edward F. Bishop, clerk. Ballard & Butler, sol'rs for compl't.

* * * * * * *

And afterwards and on, to-wit, the 30th day of January, 1888, came Robert Turner, J. S. Allison, & George E. McClelland, by Messrs. M. B. Carpenter & A. D. Bullis, their solicitors, and filed in said court and in said cause their answer to the bill of complaint heretofore filed herein; and the said answer is in words and figures as follows, to wit:

*Answer of Turner, Allison, & McClelland.*

The defendants now come and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had to the many errors and uncertainties and imperfections in the said bill contained, in answer thereto, or so much thereof as the said defendants are advised it is

material or necessary for them to make answer unto, answering, deny—

That the complainant is now or at any time was the owner of the undivided five-eighths interest or any interest in the mining claim known as the "Wallace" lode, situate in Cascade mining district, Clear Creek county, Colorado, or that the value of complainant's interest therein is twenty-five hundred dollars or any other sum.

The said defendants, further answering, admit that one John A. Clark discovered and located the Wallace Lode mining claim, as in said bill of complaint described, and admit that said John A. Clark conveyed the said Wallace lode to Henry C. Scoville, and that said Scoville conveyed the said Wallace lode to the said John A. Clark, as set forth in said bill of complaint.

The defendants, further answering, admit that the said John Clark, on the 12th day of Augu[illegible], 1882, conveyed by deed
109 the undivided three-fourths interest of the said Wallace lode to Amos Sawyer and Marcus Finch, but allege that prior to the said 12th day of August, 1882, on, to wit, the first day of May, 1882, the said John Clark conveyed by deed an undivided one-fourth interest in and to said Wallace lode to one William Hunter, which deed was duly executed, acknowledged, and delivered to the said Hunter and lodged with the recorder of the county of Clear Creek for record by the said Hunter, but was not at that time recorded, as will more fully appear by reference to a transcript of said deed, marked "Exhibit A," and made a part of this answer.

And defendants further allege that prior to the execution of the said deed of John Clark to Amos Sawyer and Marcus Finch on the 12th day of August, 1882, one Aaron Sands on, to wit, the 21st day of June, 1882, recovered judgment against the said John Clark for the sum of $129.58 and costs in the justice court of William D. Price, a justice of the peace within and for said county of Clear Creek, and such proceedings were afterwards had that an execution issued upon said judgment and was returned "no property found," and that thereupon, on the 20th day of July, 1882, a transcript of such judgment was filed with the clerk of the district court of the first judicial district within and for said county of Clear Creek, and a certified copy thereof duly recorded in the office of the clerk and recorder for said county of Clear Creek on the 20th day of July, 1882, as will more fully appear by reference to a certified copy of such transcript, hereto attached and marked "Exhibit B" and made a part of this answer.

The said defendants further allege that one Henry Ellis and one William Deemer, prior to the making of said deed of John Clark
110 to said Amos Sawyer and Marcus Finch above mentioned, to wit, on the 21st day of June, A. D. 1882, recovered judgment against the said John A. Clark in the justice court of William D. Price, a justice of the peace within and for said county of Clear Creek, for the sum of $68.16 and costs, and that such proceedings were thereafter had that an execution issued upon said judgment, and was returned "no property found," and that thereafter and on the 20th day of July, 1882, a transcript of such judgment

was duly filed in the district court of the first judicial district in and for the county of Clear Creek, and a copy thereof filed and recorded with the county clerk and recorder of said Clear Creek county on said 20th day of July, 1882, as will more fully appear by a certified copy of such transcript, hereto attached and marked "Exhibit C" and made a part of this answer.

The said defendants further allege that such judgment in favor of said Aaron Sands, Henry Ellis, and William Deemer, by virtue of the statute in such case made and provided, became liens upon the interest of said John Clark in the said Wallace lode, which defendants allege was an undivided three-fourths interest on said 20th day of July, 1882, a fourth interest in said lode having been before that time conveyed by said Clark to said William Hunter, — which last-mentioned deed the said judgment creditors had notice and knowledge.

These defendants, further answering said bill of complaint, admit that John Clark, on or about the 25th day of October, 1882, made a deed to said William Hunter for an undivided one-fourth interest in and to said Wallace lode, therein and thereby the former deed made by said John Clark to said William Hunter was mentioned and described as having been destroyed or lost, whereas, in truth and in fact, the said defendants allege that the same
111 was not lost or destroyed, but had been lodged with the clerk and recorder, as hereinbefore set forth.

The said defendants, further answering, admit that the said Amos Sawyer and Marcus Finch, on or about the 26th day of October, 1882, reconveyed a one-half interest in and to said Wallace lode to said John Clark, as in and by said bill of complaint set forth; but defendants allege that whatever vested in said Clark by said deed was charged with the lien of the judgments hereinbefore mentioned.

These defendants, further answering, admit the making of the power of attorney by said John Clark and William Hunter to Peirce T. Smith, as in said bill set forth.

These defendants, further answering, admit that said Marcus Finch conveyed to Alice E. Finch, on the 8th day of January, 1883, an undivided one-eighth interest of said Wallace lode, but allege that such conveyance was made subject to the lien of the judgments hereinbefore described.

These defendants, further answering, admit that the said Peirce T. Smith, under and by virtue of said power of attorney, conveyed an undivided three fourths interest of said Wallace lode to Amos Sawyer and one John S. Sanderson; but defendants allege that such conveyance was subject to the lien of the judgments hereinbefore mentioned.

These defendants admit that at the time of the execution and delivery of said last-mentioned deed there were four judgments of the defendants of record in the office of the recorder upon which execution had been issued and levied upon the undivided three-fourths interest in the said Wallace lode as the property of the said John Clark, as in said bill described.

112 These defendants, further answering, say that whether or not a part of the consideration of the said conveyance was that the said Sawyer and the said Sanderson should take up, pay off, and discharge the said four judgment liens these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief, and neither admit nor deny the same, but require strict proof thereof; that whether or not the amount of said judgments was then and there or ever figured up or ascertained and the amount kept back or retained out of the purchase price paid for the interest of said John Clark by said Sawyer and Sanderson or the said Sanderson acted for himself and the said Sawyer these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief, and neither admit nor deny the same, but require strict proof of the same.

These defendants deny that said Sanderson did pay said debtors or took up or caused the said liens to be discharged at any time or place. They admit that said Sanderson did bid in the interest of the said John Clark in the undivided three-fourths interest of said Wallace lode at sheriff's sale, as in and by said bill of complaint described.

They deny that on or about the 21st day of January, 1885, or at any other time the said Sanderson assigned, transferred, set over unto the said John Clark for the use and benefit of said grantees or for the use and benefit of any person whatever any certificate of sale issued by the sheriff of Clear Creek county of any interest in said Wallace lode.

These defendants admit the making of the deed by Amos Sawyer to the complainant, Alfred A. K. Sawyer, on or about the 12th
113 day of January, 1885, but deny that the said Amos Sawyer had any interest in or to said Wallace lode at the time of the making and delivery of said deed, either legal or equitable.

These defendants, further answering, admit that the complainant, Alfred A. K. Sawyer, made deed of all his right, title, and interest in said Wallace lode to Alice Finch on or about the 16th day of March, 1886, but deny that the complainant, Alfred A. K. Sawyer, had any right, title, or interest in and to said Wallace lode.

These defendants, further answering, admit the making of the deed by Alice E. Finch to the complainant, Alfred A. K. Sawyer, bearing date the 13th day of November, 1886, of all her right, title, and interest in said Wallace lode, but deny that at that time the said Alice E. Finch had any right, title, or interest in or to said Wallace lode, either legal or equitable.

These defendants, further answering, deny that all their interest, claim, or demand of, in, and to the Wallace lode was derived from sheriff's deed under certificate of sale to A. K. White upon execution issued in favor of one John F. Teal or upon notice of forefeiture published by defendant Turner.

These defendants, further answering, admit the filing of the lien by John F. Teal, the obtaining of judgment by said Teal, the issuing of the writ of execution in favor of said Teal, and the levy and sale of the right, title, and interest of John S. Sanderson, Pierce T.

Smith, and Marcus Finch of said Wallace lode to A. K. White and the assignment of said certificate of sale by said White to defendant, Robert Turner. They admit the filing of the lien by one Charles Christianson, the judgment to enforce said lien, the judgment obtained before James Cherry, justice of the peace, the filing of the transcript of said judgment, the assignment thereof to de-
114 fendant, Robert Turner, the issuing of the writ of execution in favor of William Hunter upon said judgment, the levy thereof and the sale to said Turner upon levy made in favor of the said Charles Christianson, and the sale upon the execution issued in favor of said Hunter to the defendant Turner, as in said bill of complaint described.

These defendants, further answering, admit the execution and delivery to the defendant, Robert Turner, of a sheriff's deed to an interest in the Wallace lode purchased by the said A. K. White at sheriff's sale upon execution as in and by said bill described.

These defendants, further answering, aver that in and by the sheriff's deed in said bill of complaint described the defendant, Robert Turner, became and was from thence hitherto the owner of all the interest of the said Sanderson, both legal and equitable, in and to said Wallace lode, and became and was the owner of an undivided seven-eighths interest in and to said Wallace lode by virtue of the judgments, executions, levies, sales, and sheriff's deeds in said bill of complaint described.

These defendants, further answering, admit that the defendant Turner employed one Washington Johnson to do and perform the assessment work upon said Wallace lode for the year 1884, and allege that said Washington Johnson did perform the annual labor upon said mine to the amount and value as required by the act of Congress.

These defendants, further answering, say that whether or not Amos Sawyer or Alice E. Finch procured the services of John E. Owens to do the assessment work on said lode, or whether or not the said Owens went to said property and found the assessment work done or so informed said Sawyer and said Alice E. Finch,
115 these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief, and neither admit nor deny the same, but require strict proof thereof.

These defendants, further answering, admit that the said Johnson assigned his interest in said lien, claim, or demand to one John W. Ward, and that said Ward filed said lien, claim, or demand in the office of the recorder of Clear Creek county, as in said bill of complaint set forth.

These defendants, further answering said bill of complaint, deny that Amos Sawyer or Alice E. Finch, either or both of them, were the owners of an undivided five-eighths interest in said Wallace lode on the 18th day of January, 1885, or at any time during the year 1884, or that they or either of them, through their authorized agent or otherwise, offered to pay to petitioner their portionable part of the one hundred dollars expended for the assessment work of 1884, and deny that defendant Turner refused to accept or receive from peti-

tioner any sum whatever for their share or any share of the expenses theretofore incurred in performing the annual labor upon said Wallace lode for the year 1884, but allege that the defendant Turner was ready and willing to accept a one-eighth share or proportion of said sum of one hundred dollars, which one-eighth share or proportion thereof was never offered or tendered to defendant Turner at any time or place.

These defendants, further answering, say that whether or not Alice E. Finch or the complaintant have ever been ready or willing to pay their proportion of the assessment work for the year 1884, or that they are now ready and willing to pay the same or any part thereof, these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief, and
116 neither admit nor deny the same, but require strict proof thereof.

These defendants, further answering, admit the publication of the forfeiture notice and the filing thereof in the office of the recorder of said Clear Creek county, as in said bill of complaint set forth.

These defendants, further answering, admit the institution of proceedings in the United States land office to obtain patent for said Wallace lode by the said defendant, Robert Turner, as in said bill of complaint alleged; but these defendants deny that such proceedings were commenced in fraud of complainant's rights or the rights of Amos Sawyer or Alice E. Finch or in fraud of the rights of the Government of the United States. These defendants admit the filing of such receiver's receipt in the office of the recorder of Clear Creek county, as in said bill set forth; but they deny that any of the proceedings instituted or prosecuted by said defendant Turner were false or fraudulent, either against the United States or the said Sawyer, Alice E. Finch, or the complainant, and deny that the said Turner is not entitled to patent for the said Wallace lode, but aver that he was at the time of the issuing and delivery to him of such receiver's receipt the legal and equitable owner of all of said Wallace Lode mining claim and each and every part thereof.

These defendants admit the conveyance to defendant Allison of an undivided one-fourth interest in said lode and the conveyance by defendant Turner to defendant McClelland of the undivided one-fourth interest in said lode, as in said bill of complaint set forth.

These defendants, further answering said bill of complaint, admit that on or about the 20th day of November, 1884, defendant Turner entered into possession of said Wallace lode, and that he com-
117 menced mining thereon, but deny that said Turner or either of the defendants have extracted ores or minerals from Wallace lode of the value of fifteen thousand dollars or any other sum, save and except the value of fifteen hundred and thirty-two dollars and ninety-two cents, which said last-mentioned sum was taken from the ores taken from said Wallace lode at an expense exceeding the sum of two thousand dollars.

These defendants admit that they have never paid Alice E. Finch, Amos Sawyer, or the complainant any part or proportion of the amount of ore or the proceeds thereof extracted from said Wallace

lode, and allege that they nor either of them are entitled to any part or share thereof, and that no amount has been received by these defendants out of said Wallace lode or the ores extracted therefrom in excess of the expenditure made by them in improvements thereon.

These defendants, further answering, deny that complainant is entitled to have, demand, or receive five-eighths of the net proceeds of ores or minerals mined from said Wallace lode or any portion thereof, and deny that there has been any net proceeds arising from the mining or working upon said lode.

These defendants, further answering, admit that they claim or pretend to be the owners of said Wallace lode, and that they derived title through certain sales made on execution to seven-eighths interest in said Wallace lode, but deny that they claim or pretend to own a three-fourths interest alone of said lode by virtue of said sales, and aver that they claim to own seven-eighths interest under and by virtue of said sales.

These defendants admit that they claim under the mineral entry made by defendant Turner of said Wallace lode, and that all
118 proceedings were legal and regular touching the procurement of such receiver's receipt.

They admit that they claim the right to take ores and minerals from said Wallace lode without being liable to account for the same to the complainant.

These defendants deny that they claim or pretend that the deed from John Clark to William Hunter was made long prior to October 26th, 1882, but aver that in fact a deed was made prior to that date by said Clark to said Hunter, as hereinbefore set forth.

These defendants, further answering, say that whether or not any deed from John Clark to John Sanderson was deposited in any bank at any time under any agreement concerning an interest in said Wallace lode these defendants have not and cannot obtain sufficient information or knowledge upon which to base a belief, and neither deny nor admit the same, but require strict proof thereof.

These defendants deny that any interest remaining in the name of said Sawyer or Marcus Finch *were* free and clear of the judgment liens set forth in said bill of complaint; deny that said liens ever ceased, terminated, or were extinguished in the bidding in of said property on the part of said John S. Sanderson, and deny that the title to the undivided three-fourths interest was held by said Sanderson or Amos Sawyer, in equal parts or otherwise, free or clear of said four several judgment liens, but aver the contrary thereof to be true.

For answer to the several interrogatories these defendants say:

First. That they nor either of them were the original locators of said lode claim.

Second. That, on information and belief, they state that
119 John Clark was the locator of said lode claim.

Third. That they derived their title to said lode claim as hereinbefore set forth.

Fourth. That whether or not the chain of title claimed by the complainant has been broken or not they are unable to say, but, on

information and belief, state that the same was broken by the execution sales hereinbefore set forth.

Fifth. They admit that their original interest in said lode claim was obtained by sheriff's deed under the levies hereinbefore described.

Sixth. These defendants say they entered into possession of the whole of said Wallace Lode mining claim under and by virtue of the execution sales and conveyances set forth in this answer.

Seventh. These defendants say that they have acquired the right to the sole possession and the sole ownership of the said Wallace lode under and by virtue of the execution sales hereinbefore described and the failure on — part of complainant to pay his proportion of the annual labor performed on said lode during the year 1884.

Eighth. These defendants say that the complainant and his grantors forfeited their right, title, and interest, if any they had, in said Wallace Lode mining claim by failure to pay their proportion of the expenditure made during the year 1884 as required by the act of Congress, and that at this time no other person save these defendants are interested in said lode claim, and that all other persons mentioned in said bill of complaint have been divested of their right, title, and interest therein by virtue of such execution sale, sheriff's deed, and forfeiture notice hereinbefore set forth.

120 Ninth. These defendants admit that at the time the annual labor was performed upon said lode for the year 1884 some interest remained in Amos Sawyer, but that the same was conveyed to the complainant prior to the notice of forfeiture given by defendant Turner, and that such forfeiture notice was given to the complainant as being the only person claiming an interest in said lode at the time such notice was published. They admit that Marcus Finch offered to pay five-eighths proportion of the one hundred dollars expended for the annual labor of 1884, but aver that no tender was made by said Finch or any one else of any proportionate amount of said one hundred dollars, and that defendant Turner informed the said Finch that the complainant in any event was only liable to pay a one-eighth proportion of said one hundred dollars, which one-eighth proportion was never offered or tendered by said Marcus Finch or any one else.

Tenth. These defendants, answering the tenth interrogatory, state that this defendant, Turner, paid Washington Johnson the sum of one hundred dollars for performing the annual labor upon said Wallace lode for the year 1884; that where such labor was performed upon said claim—what part of it—these defendants are unable to state. They are unable to state whether a lien was filed for doing such assessment work upon said claim.

Eleventh. These defendants say that they fully answered said 11th interrogatory in the allegations and averments of this answer hereinbefore set forth.

Twelfth. These defendants say they nor either of them ever jumped the said Wallace Lode mining claim.

Thirteenth. These defendants answer yes to said interrog-
121 atory thirteen.

Fourteen. These defendants say that by the right and authority of sole ownership of title on the part of defendant, Robert Turner, they instituted and prosecuted proceedings to obtain patent in the name of said Turner.

Fifteenth. Defendants answer yes to the fifteenth interrogatory.

Sixteenth. These defendants answer yes to the sixteenth interrogatory.

Seventeenth. These defendants say that defendant Turner did attend the sheriff's sale and was a bidder at the same and became the purchaser under said sale, but are unable at this time to state the amount paid at said sale.

Eighteenth. These defendants say that no other person except themselves have been their grantees or the grantees of said Turner of any interest in said Wallace lode, and aver that they now claim the full and complete title of said Wallace Lode claim.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge and belief of these defendants; and all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ROBERT TURNER,
J. S. ALLISON, AND
GEO. E. McCLELLAND,
*Defendants.*

(Signed) A. D. BULLIS,
*Idaho Springs,*
M. B. CARPENTER, *Denver,*
*Solicitors for Defendants.*

122 STATE OF COLORADO, } *ss:*
*Clear Creek County,* }

On this 27th day of Jan'y, 1888, before me personally appeared Robert Turner, one of the defendants named in the foregoing answer, and made oath that he has read the above answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on information and belief, and as to those matters he believes them to be true.

(Signed) ROBERT TURNER.

Subscribed and sworn to before me this 27th day of January, 1888.

[SEAL.] (Signed) ORIGIN HALL,
*Notary Public.*

"EXHIBIT A."

This indenture, made the first day of May, in the year of our Lord one thousand eight hundred and eighty-two, between John Clark, of the county of Clear Creek and State of Colorado, of the first part, and William Hunter, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of nine hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has sold, remised, re-
123 leased, and quitclaimed, and by these present does sell, remise, release, and quitclaim, unto the said party of the second part and to his heirs and assigns forever the following-described premises, to wit: An equal undivided one-fourth (¼) part or share and interest in and to the "Wallace" Lode mining claim, as situated in Cascade mining district, in Clear Creek county, Colorado, more fully and particularly described in the location certificate thereof, as recorded in said Clear Creek county records and hereby referred to for such description, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part of, in, and to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second party, his heirs and assigns forever.

In testimony whereof the said party of the first part has hereunto set his hand and his seal the day and year first above written.

JOHN CLARK. [SEAL.]

Signed and delivered in presence of—
I. N. SMITH.

(Duly acknowledged.)

* * * * * * *

124 "EXHIBIT B."

*Transcript of Judgment Docket.*

No.: ——.
Judgment debtor: John Clark.
Judgment creditor: Aaron Sands.
Judgment: $129.58; costs, $14.20.
Time of entry: July 20th, 1882.
Where entered in judgment book: T. D. 267.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

AARON SANDS, Plaintiff, }
*vs.*
JNO. CLARK, Defendant. }

CLERK'S OFFICE,
DISTRICT COURT, FIRST JUDICIAL DISTRICT.

This is to certify that the foregoing is a true, full, and cor-
125 rect transcript of the entries in the above-entitled action as the same appear in the judgment docket kept in my office.
[L. S.] Attest my hand and the seal of the said court this 20th day of July, A. D. 1882.

H. H. ATKINS, *Clerk.*

Recorded July 20, 1882, at 1½ o'clock p. m.
F. L. PECK, *Recorder.*

* * * * * * *

126 "EXHIBIT C."

*Transcript of Judgment Docket.*

No.: ——.
Judgment debtor: John Clark.
Judgment creditors: Henry Ellis, Wm. Deemer.
Judgment: $68.16; costs, $14.20.
Time of entry: July 20th, 1882.
Where entered in judgment book: T. D. 269.

STATE OF COLORADO, } ss:
*Clear Creek County,* }

HENRY ELLIS *et al.*, Plaintiffs, }
*vs.*
JNO. CLARK, Defendant. }

CLERK'S OFFICE,
DISTRICT COURT, FIRST JUDICIAL DISTRICT.

This is to certify that the foregoing is a true, full, and correct transcript of the entries in the above-entitled action as the same appear in the judgment docket kept in my office.
[L. S.] Attest my hand and the seal of the said court this 20th day of July, A. D. 1882.

H. H. ATKINS, *Clerk.*

Recorded July 20, 1882, at 1½ o'clock p. m.
F. L. PECK, *Recorder.*

* * * * * * *

127 & 128 (Indorsed:) 2125. U. S. circuit court. Alfred A. K. Sawyer *vs.* Robert Turner *et al.* Answer of def'ts. Filed

Jan. 30, 1888. (Signed) William A. Willard, clerk. M. B. Carpenter & A. D. Bullis, att'ys for def'ts, Denver, Colo.

* * * * * * *

129 And afterwards and on, to wit, the 20th day of July, A. D. 1888, came Andrew W. Brazee, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of evidence taken before him, and the said report is in words and figures as follows, to wit:

EXHIBIT A.

*Examiner's Report.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court in & for the 8th Circuit and District of Colorado. In Equity.

ALFRED A. K. SAWYER, Compl't,
*vs.*
ROBERT TURNER, J. S. ALLISON, and GEORGE E. MCCLELLAND, Def'ts. } Stipulation.

In this cause it is hereby stipulated that either or both
130 parties—complainant & defendants—may take testimony of such witnesses as they may desire before Hon. A. W. Brazee, master in chancery, at any time within the 90 days next ensuing, complainant to commence on June 1st, 1888, defendants to commence on twenty-four hours' notice to compl'ts sol'rs.

Dated Denver, May 16th, 1888.

BALLARD & BUTLER,
*Sol'rs for Compl't.*
A. D. BULLIS,
*Sol'r for Def'ts.*

Filed before me May 16th, '88.

A. W. BRAZEE, *Examiner.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

Caption.

Be it remembered that on the 4th day of June, in the year of our Lord one thousand eight hundred and eighty-eight, in pursuance of the foregoing stipulation, prefixed and marked Exhibit A, the party to the cause therein and herein also mentioned appeared before me, Andrew W. Brazee, an examiner in chancery of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit:

The complainant in said cause, by Mr. Ballard, of the firm of Bal-

lard & Butler, his solicitors, and the defendants, by M. B. Carpenter, their solicitor.

And on this day the following proceedings were thereupon
131 had, to wit, in said circuit court, wherein Alfred A. K. Sawyer is complainant and Robert Turner & others, defendants:

The complainant, to maintain the issues on his part, offered in evidence a certain stipulation between the parties, signed by their respective solicitors, which was received and is hereto annexed and marked Exhibit B.

The parties further orally stipulated before me, by their solicitors appearing as aforesaid, that exhibits attached to the bill of complaint herein be, and are hereby, received in evidence without further proof thereof & without objection on either side. No other evidence was offered before me under said Exhibit "A."

"EXHIBIT B."

UNITED STATES OF AMERICA, } ss:
*District of Colorado,* }

In the District Court of the United States for the 8th Circuit and District of Colorado.

ALFRED A. K. SAWYER, Complainant,
*vs.*
ROBERT TURNER, J. S. ALLISON, and GEORGE E. MCCLELLAND, Defendants.
} Stipulation and Agreed Statement of Facts.

In this case it is hereby stipulated by the respective parties, by their several and respective solicitors, that the following are admitted by both complainant and defendants to be facts, and that, so far as such facts go, neither party shall be put to proof of the same, but the same shall be, and the same hereby are, declared to be
132 facts in said case and entitled to the same weight and consideration as though regularly proved.

1st.

That complainant, A. A. K. Sawyer, is a citizen of the State of Illinois, and the defendants are citizens of the State of Colorado.

2nd.

That the whole value of the Wallace lode property is the sum of ten thousand dollars.

3rd.

That John Clark located the Wallace lode September 20th, 1878, location certificates recorded in Book 47, at page 138, of the records of Clear Creek county, Colorado, Exhibit "A" of bill.

4th.

November 19th, 1879, John Clark conveyed whole of Wallace lode to Henry C. Scoville. Record Book 45, page 537, Exhibit "B" of bill.

5th.

June 28th, 1880, Scoville conveyed back to John Clark whole of Wallace lode. Record Book 52, page 190, Exhibit "C" of bill.

6th.

August 12th, 1882, John Clark conveyed an undivided three-fourths of Wallace lode to Amos Sawyer and Marcus Finch, Record Book 69, page 62, Exhibit "D" of bill; and also admitted that on May first, 1882, John Clark executed and delivered a deed to William Hunter of an undivided one-fourth of Wallace lode, but that said deed has never been recorded, and that Amos Sawyer and Marcus Finch had no knowledge of such deed until October 25th, 1882, at the occasion of the making of the deed, Exhibit "E" of the bill;

133 that when Exhibit "D" of the bill was executed by Clark to Amos Sawyer and Marcus Finch, conveying a three-fourths interest in the Wallace lode, Clark told them that he owed William Hunter, and that if they wanted that other one-fourth they must pay him, Clark, seven hundred dollars for it, as he owed Hunter about three hundred dollars, and must pay it out of the price obtained for that one-fourth or he would deed to Hunter in extinguishment of the debt.

7th.

October 25th, 1882, John Clark conveyed an undivided one-fourth of Wallace lode to William Hunter, Record Book 67, page 333, Exhibit "E" of bill, and that said deed contains a recital that it was made to supply last deed referred to in paragraph 6th hereof.

8th.

October 26th, 1882, Amos Sawyer and Marcus Finch reconveyed an undivided one-half of Wallace lode to John Clark. Record Book 69, page 106, Exhibit "F" of the bill.

9th.

October 26th, 1882, John Clark and William Hunter made and executed their power of attorney to Pierce T. Smith, Exhibit "G" of the bill, and that that power of attorney remained unrevoked and unused till March 16th, 1883, when Smith, in exercise of the power, deeded an undivided three-fourths of Wallace lode to Amos Sawyer and John S. Sanderson. Exhibit "I" of the bill.

10th.

January 8th, 1883, Marcus Finch conveyed an undivided one-eighth of Wallace lode to Alice E. Finch. Record Book 69, page 155, Exhibit "H" of the bill.

11th.

March 16th, 1883, John Clark and William Hunter, by
134 their attorney-in-fact, Pierce T. Smith, conveyed an undivided three-fourths of Wallace lode to Amos Sawyer and John S. Sanderson. Record Book 69, page 205, Exhibit "I" of the bill.

12th.

That when the deed from John Clark to Marcus Finch and Amos Sawyer (Exhibit "D" of the bill) was made and delivered there were two certain abstracts or transcripts of judgments against John Clark on record in the office of the county clerk and recorder of Clear Creek county, Colorado—one in favor of Aaron Sands for $129.58 and costs and interest and one in favor of Ellis and Deemer for $68.16 and costs and interest; that the said two judgments were filed in the clerk and recorder's office on the 20th day of July, 1882; that when the transcripts or abstracts of these judgments were recorded as aforesaid the said judgment creditors had knowledge and information of the existence of the unrecorded deed from John Clark to William Hunter, the same being Exhibit "A" of the answer; that there were two other judgments against said Clark—one in favor of George A. Patten for $165.85 and costs and interest and one in favor of Ira Hutchinson for $50.25 and costs and interest; that a transcript of the Patten judgment was filed in said clerk and recorder's office on August 14th, 1882, and of the Hutchinson judgment on September 11th, 1882; that at the time the deed, Exhibit "I" of the bill, was executed sale on the four executions issued on these four judgments was being advertised by an advertisement in the words and figures following:

"By virtue of four certain writs of execution issued out of the clerk's office of the district court of Clear Creek county upon transcripts of judgments from W. D. Price, one of the justices of the peace in and for said county and to me directed, whereby I am commanded to make the amount of four certain judgments re-
135 cently obtained against John Clark—one of said judgments being — favor of Aaron Sands, and being for the sum of one hundred and twenty-nine dollars and fifty-eight cents ($129.58) damages and fifteen dollars and seventy cents ($15.70) costs and accruing costs; also one in favor of Ira Hutchinson, and being for the sum of fifty dollars and twenty-five cents ($50.25) damages and eighteen dollars and eighty-five cents ($18.85) costs and accruing costs; also one in favor of George A. Patten, and being for the sum of one hundred and sixty-five dollars and eighty-five cents ($165.85) damages and fifteen dollars and ninety-one cents ($15.91) costs and accruing costs, and the other of said judgments being in favor of Ellis & Deemer, and being for the sum of sixty-eight dollars and sixteen cents ($68.16) damages and fifteen dollars and seventy cents ($15.70) costs and accruing costs—out of the lands, tenements, goods, and chattels of the said John Clark, I have levied on the following property, to wit:

"An undivided three-fourths (¾) interest in and to the Wallace

lode, said lode situate, lying, and being in Cascade mining district, Clear Creek county, State of Colorado.

"Therefore, according to said command, I shall expose for sale at public vendue all the right, title, and interest of the above-named John Clark in and to the above-described property on Monday, the 2d day of April, A. D. 1883, at two o'clock p. m., at the front door of the court-house, in Georgetown, in said county of Clear Creek.

"Dated Georgetown, this 9th day of March, A. D. 1883.

"JOHN C. DE VOTIE,
"*Sheriff of Clear Creek County,*
"By JAMES PERCHARD, *Deputy.*"

136 That from said advertisement the said four judgments were figured up, principal, interest, and costs, and the amount was kept out of the purchase price to Clark, which deed was Exhibit "I" of the bill, and that Amos Sawyer and Sanderson agreed with Clark to pay off those four judgments, and that said Clark received from Amos Sawyer and J. S. Sanderson the balance of the purchase price in cash.

That afterwards and on the 2nd day of April, 1883, the said Sanderson, at the sheriff's sale made under the foregoing advertisement, bid in the property advertised and a certificate of purchase was made to said Sanderson for a three-fourths interest in the Wallace lode; that Sanderson made such bid for himself and Amos Sawyer and paid for such certificate the amount of said four judgments and costs out of the money retained for the purpose; that none of the judgment creditors nor defendents herein had knowledge or notice of the foregoing arrangement between Clark and Sawyer and Sanderson or of the action of Sanderson wherein he acted jointly for himself and Sawyer.

That Sanderson took the certificate of sale, Exhibit "J" of the bill, and that afterwards, on January 21st, 1885, Sanderson made an assignment of said certificate of sale to Clark, Exhibit "K" of the bill. The assignment was not upon the certificate of purchase, but by a separate instrument in writing.

13th.

January 12th, 1885, Amos Sawyer made a deed to an undivided one-half of Wallace lode to complainant, A. A. K. Sawyer, Exhibit "L" of the bill.

14th.

March 16th, 1886, A. A. K. Sawyer made a deed to all of his interest in Wallace lode to Alice E. Finch. Record Book 83,
137 page 89, Exhibit "M" of the bill.

15th.

November 3d, 1886, Alice E. Finch made a deed to all her interest in Wallace lode to A. A. K. Sawyer. Record Book 68, page 444, Exhibit "N" of the bill.

16th.

That John Clark and his grantees had unbroken possession of the Walace lode from its location, September 20th, 1878, down to November 20th, 1884, when defendant Turner took possession.

17th.

Admitted that John F. Teal filed a lien on the Wallace lode; that he obtained judgment; that execution was issued against the interest of John S. Sanderson, Pierce T. Smith, and Marcus Finch, and none others; that the above-named interest was sold on said executions to A. K. White; that the certificate of sale to White was by him assigned to defendant Turner August 25th, 1884, and this assignment of that certificate of sale was the first interest Turner had in the Wallace lode property. The filing of a lien by Charles Christenson, the judgment to enforce said lien, the obtaining of two judgments by William Hunter before Justice Cherry, of Arapahoe county, the filing of transcripts of those two judgments, the assignment of those two judgments by Hunter to defendant Turner, the issuing of execution in favor of Hunter on the two judgments, the levy of said execution, the sale on said execution to defendant Turner, and also the sale to Turner on sale under the execution issued on the Charles Christenson judgment are all admitted as set forth in the bill.

18th.

It is admitted the sheriff of Clear Creek county did not file
138 a certificate of redemption from the sale under the execution issued upon the Teal judgment (and execution) at any time.

19th.

The execution of sheriff's deed to Turner of Wallace lode by virtue of the sale on the Teal execution, Record Book 72, page 124, Exhibit "10," is admitted.

20th.

That Washington Johnson, at the instance of Turner, performed the assessment work on Wallace lode for the year 1884, some time between December 2nd and December 25th; that Amos Sawyer and Alice E. Finch sent John E. Owens up to do the assessment work about December 25th, 1884; that Owens found the assessment work had been done, and so reported to Amos Sawyer and Alice E. Finch.

21st.

Washington Johnson, on January 26th, 1885, assigned a lien claim for labor on Wallace lode and against the interest of J. S. Sanderson, Amos Sawyer, and Alice E. Finch therein, which was for the doing of assessment work for the year 1884, to John W. Ward.

22nd.

January 26th, 1885, Ward brought a lien against the interest of J. S. Sanderson, Alice E. Finch, and Amos Sawyer on the Wallace lode under Johnson's claim for labor on the assessment work of 1884, Record Book 76, page 71, Exhibit "11," and Ward was paid by Turner on January 27th, 1885.

23d.

As to allegations 40 and 41 of the bill, an offer by Amos Sawyer and Alice E. Finch to pay Turner for a proportion of the 1884 assessment work, as well as subsequent assessment work, the following letters, eight in number, are admitted as evidence without
139 objection:

(Copy.)

IDAHO SPRINGS, COLO., *Jan'y* 15, 1885.

Marcus Finch, Esq.

DEAR SIR: In looking up the abstract to the "Wallace," preparatory to suing for the $100 assessment work, I find only two parties—and those were Sanderson and Sawyer—who have or had any equity remaining in the Wallace lode up to Dec. 2, '84.

P. T. Smith never had any ownership. You and Sawyer bought after the judg'ts *vs.* Clark were entered up.

You deeded to Alice Finch what equity you had in it after Sawyer and you had redeeded ½ interest to Clark, leaving an equity of ⅛ in Sawyer, an equity of ⅛ in A. Finch. Clark and Hunter deeded Clark's ½ and Hunter's ¼ to Sanderson and Sawyer.

Sheriff sold Clark's original ¾ to Sanderson for judg'ts obtained previous to Clark selling to you and Sawyer, leaving ⅛ in Sanderson and ⅛ in Sawyer.

Teal's sale in June cuts them out, and I cannot see wherein you or A. Finch had any equity to redeem on the Teal sale, seeing that A. Finch's interest was forfeited under the sheriff's sale to Sanderson.

I see Armstrong has got judgment. Can you give me Sanderson and Sawyer's address? By doing so you will greatly oblige,

Yours truly, ROBERT A. TURNER.

140 DENVER, COLO., *Jan'y* 18, 1885.

R. Turner, Esq., Idaho Springs, Colo.

D'R SIR: Yours of the 16th inst. received. As you have undertaken to explain abstract to Wallace lode I will give you my understanding of it: 1st, Clark held whole title.

Aug. 26, '82, conveyed ¾ to Sawyer and Fish, warranty D.; afterwards S. & F. reconvey ½ to Clark.

Executions against Clark levied on ¾ now held by him. Clark and Hunter convey ¾ to Sanderson and Sawyer, and to protect the title to this ¾ and as part of the consideration for its purchase it

is bid in by Sanderson for benefit of himself and Sawyer—in reality a merger of title—and as a part of the executions under which sale was made were issued on judgments obtained against Clark after he had conveyed to Sawyer and Finch, the sale affected only the ¼ still held by Clark and the ½ reconveyed to him by Sawyer and F., making the ¾ levied upon; ⅛ conveyed by Finch to A. E. Finch in Jan'y, '83. So at present title stands:

⅛ in A. E. Finch,
⅜ " Jno. S. Sanderson,
⅜ " Amos Sawyer or his grantees,

changed only as they would be by the recent suits or conveyances by the parties. As there has never been any process of court served on either Alice E. Finch or Amos Sawyer, they are certainly not divested of any part of their title, and I am ready to pay their *pro rata* part of the $100 expended for assessment work for 1884 without suit. Jno. S. Sanderson's P. O. address is Denver, Colo. I do not know his residence number, but think he has a P. O. box.

141 Yours truly, MARCUS FINCH.

IDAHO SPRINGS, COLO., *Jan'y* 18, 1885.

Marcus Finch, Esq.

DEAR SIR: In all probability I shall have no interest in the Wallace lode after the 1st of Feb'y, as I understood Armstrong & Co. are going to redeem former sales; yet to set you right in regard to certain interests I went to my lawyer's office after I received your letter and got the abstract of Wallace lode, and herewith give you the main details:

June 28, 1880. Clark had the whole.
May 25, 1882. Clark conveyed ¼ to Hunter. (Mark the dates.)
July 20, 1882. Judg'ts against Clark entered in district court.
Aug. 12, 1882. Clark conveyed his remaining ¾ to F. & S.
Oct. 26, 1882. F. & S. convey ½ to Clark.
Dec. 16, 1882. 4 ex's issued out of dist. c't against Clark's original ¾, after he had sold to Hunter, and which he, Clark, held July 20, '82, being the same ¾ deeded to F. & S., and of course, as you will see, subject to the July 20, '82, judg'ts. If Clark gave a warranty deed, then you and S. must look to Clark.
Jan'y 8, '83. F. conveyed ⅛ to A. E. F. (p't of the ¾ conveyed by Clark after judg'ts were entered). Up to this time Hunter holds his ¼ clear and Clark has an interest in one-half conveyed by you and S.

142

Mar. 10, '83. Hunter conveys his quarter and Clark conveys his half to Sanderson and Sawyer (got from you and S., p't of the same ¾ subject to judg'ts).

April 2, 1883. Sheriff sold to J. S. Sanderson the same ¾ on which the judg'ts were entered July 20, '82, and on which ex's were issued Dec. 16, 1882, thereby cutting out Sawyer and you of the ¼ retained after deeding back to Clark a ½. Said judg'ts, ex's, and sale, being a lien on the ¾ deeded to you and S., render Clark liable to you and S. and you and S. liable to your grantees—that is, if you gave and received warranty deeds.

Therefore, as I said before, and it will take no lawyer to point it out, that you and A. E. Finch were out entirely, except your right of redemption from the Ap'l 2, '83, sale, and that Sawyer held only his undivided ½ in Hunter's ¼, purchased Mar. 10, '83, in connection with Sanderson; so it leaves it just as I said:

| | | |
|---|---|---|
| Sanderson, by purchase at sheriff sale | | ¾ |
| " " of Hunter undivided | | ⅛ |
| | | ⅞ |
| Sawyer, " " " | ⅛ | ⅛ |
| | | Whole. |

You start out in your letter with the understanding that Clark owned the whole when he deeded to you and S.; also with the understanding that the judgments were entered against Clark after he deeded to you, whereas Clark had deeded ¼ to Hunter two months before judgments were entered; also when the judgments were got Clark only held ¾, which said ¾ he afterwards deeded you and S., letting Clark out entirely until he received the ½ back from you and S., which said ½ he deeded to Sanderson and Sawyer at the
143 same time Hunter deeded his fourth. Of course after Armstrong pays up all sales I have nothing further to do with it, only the last sales cut out Sanderson and Sawyer, who are the only remaining parties in interest, according to the records of Clear Creek county, and it was unnecessary to make any others who were cut off by the sheriff on April 2, '83, defendants in the late suits, although they were all included except A. E. Finch, and she could only buy in subject to the judgments, as you and S. had done, and she did not avail herself of the equity of redemption under the sale of April 2, 1883.

Thanks for Sanderson's address. Don't you think his address might be in the directory? I note what you say in regard to the $100, but the records only show Sanderson and Sawyer as having any remaining interest in the Wallace. When I got the abstract I only read it carelessly, then handed it to my lawyer, who at the first glance pointed out just as I have wrote you. I am,

Yours truly, ROBERT TURNER.

P. S.—Sawyer was made defendant in all suits since he bought an interest in Hunter's ¼.

DENVER, COLO., *May* 22, 1886.

Rob't Turner, Esq., Idaho Springs, Colo.

DEAR SIR: As the agent for the owner of an undivided ⅛ interest in the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, I am ready to pay the *pro rata* part of the $100 expended as the annual assessment on said property for the
144 year 1885, as well as a like portion of the sum of $100 expended for the same purpose upon said property for the year 1884, which you have so far declined to receive.

Yours truly, MARCUS FINCH.

IDAHO SPRINGS, COLO., *May* 23, 1886.

Marcus Finch, Esq.

DEAR SIR: In reply to yours of the 22, permit me to say that you will save time and money by ordering an abstract of title on the Wallace lode, as I had to do. Your wife's and Sawyer's title was extinguished by the sheriff's sale to Sanderson, and to Sanderson only. Sanderson's interest of ⅞ was sold to me. Sawyer's ⅛ that he purchased from Hunter was duly forfeited by giving legal notice, and your offer of money now is just about eight months too late. I hold Clark's original deed to Hunter, dated May 1st; also Clark's duplicate deed, with full explanation on face why duplicate was given, with your signature as witness to said deed.

Also have the affidavits of justice of peace, who authorized the levy on ⅞ held by Clark at time of judgments, but the abstract has been examined by lawyers able to give opinions in regard to titles, and, proceeding under their advice, have obtained the patent, have transferred ⅞ of the lode and still hold ⅛, so that a continuance of putting transfers and other instruments by you, or at least through you, on record is, as I said before, simply waste of time and money; so get abstract and see for yourself. I am,

Yours truly, ROBERT TURNER.

145 P. S.—You say that I refused to receive Sawyer's money on assessment work. That is probably a joke on your part, seeing that this is the first I ever heard of it, never having heard of A. A. K. Sawyer until the lawyer searched the records.

DENVER, COLO., *Aug.* 10, 1886.

Robert Turner, Esq., Idaho Springs, Colo.

DEAR SIR: I renew my offer to pay the *pro rata* part of annual assessment work on Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, on interest owned in said property by Mr. Sawyer and Mrs. Finch for years 1884 and 1885, as made January, 1885, and May, 1886, and send amount in any manner you may direct.

Yours respectfully, MARCUS FINCH.

P. S.—I note patent has not yet issued, as stated by you.

DENVER, *Nov.* 15, 1886.

Robert Turner, Esq., Idaho Springs, Colo.

DEAR SIR: Referring to my letters of January 18, 1885, May 22, 1886, and August 10, '86, I renew my offer to pay five-eighths of annual assessment work for years 1884 and 1885 upon the
146 Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, being the interest owned by parties for whom I am agent. I also request a statement of the products of the property and an adjustment of the proceeds thereof due my principals.

Your early attention to this matter is desired.

Very respectfully, MARCUS FINCH.

P. S.—For your information I will state that $\frac{1}{8}$ of the net proceeds from Jan'y 1st, 1885, to March 16th, 1885, and $\frac{5}{8}$ of net proceeds from March 16th, '85, to this date are due Mrs. Finch and $\frac{1}{8}$ of net proceeds from January 12th, '85, to March 15, '85, are due Mr. A. A. K. Sawyer, for which you will be held to account.

Yours, M. FINCH.

DENVER, COLO., *Feb'y 11th*, 1887.

Robert Turner, Esq., Idaho Springs, Colo.

DEAR SIR: Referring to my letters of Jan'y 18, 1885, May 22nd, 1886, August 10th, 1886, and Nov. 10th, 1886, I renew my offer to pay $\frac{5}{8}$ of the annual assessment work for the years 1884 and 1885, and hereby advise you that I am ready to pay a like portion of the annual assessment work for the year 1886 upon the Wallace lode, Cascade mining district, Clear Creek county, State of Colorado, as the agent of the legal owners thereof, and request that you instruct me as to the manner in which I shall remit the same. I also
147 have to request that you will send an account of the product of the mine and make immediate payment of the portion thereof due my principal. Your early compliance with this request is desired.

Yours truly, MARCUS FINCH,
*Agent for A. A. K. Sawyer, Owner.*

24th.

Forfeiture notice by Turner, Exhibit "12" of the bill, is admitted.

25th.

Affidavit of forfeiture filed by Turner, Exhibit "13" of bill, is admitted.

26th.

It is admitted that complainant, A. A. K. Sawyer, was not an owner in Wallace lode property in 1884, but that he took his first interest January 12th, 1885.

27th.

It is admitted that Turner instituted proceedings in the United States land office at Central City, Colorado, for the purpose of procuring a patent to Wallace lode to be issued to himself alone, as alleged, and that such proceedings ripened into receiver's receipt, Exhibit "14" of the bill, April 15th, 1886, Record Book 94, page 2.

28th.

April 20th, 1886, Turner deeded one-fourth interest in Wallace lode to J. S. Allison, Record Book 83, page 117, Exhibit "15" of the bill.

148 29th.

April 20th, 1886, Turner deeded one-fourth interest in the Wallace lode to George E. McClelland, Record Book 83, page 194, Ex. 16 of bill.

30th.

That Turner and his grantees have taken out of Wallace lode property over fifteen hundred dollars' worth of mineral, but that the cost of production has so far equaled the output.

31st.

It is admitted that from February 1st, 1882, to the 3d day of August, 1882, a deed from John Clark to the whole of the Wallace lode property running to John S. Sanderson, properly executed, lay in escrow in the Denver Bank, so called, and that Amos Sawyer and Marcus Finch knew of said deed; that Sanderson did not pay the money called for as consideration of said deed, and that the same was therefore never delivered.

Dated Denver, June 2d, 1888.

BALLARD & BUTLER,
*Sol'rs for Compl't.*
A. D. BULLIS,
M. B. CARPENTER,
*Sol'rs for Def'ts.*

149 UNITED STATES OF AMERICA, }
*District of Colorado,* } *ss:*

I, Andrew W. Brazee, duly appointed examiner in chancery by the circuit court of the United States for the district of Colorado, do hereby certify that on the several days mentioned in the proceedings annexed I was attended by the counsel and witnesses aforesaid at my office, 1540 Champa street, Denver, Colorado.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein, and that exhibits from A to B, inclusive, were introduced in evidence in said cause during the taking of said depositions.

*Examiner's Fees.*

| | |
|---|---|
| 2 days, May 16 & June 4th | $6 00 |
| 6 folios, @ 20 | 1 20 |
| Marking two "exhibits," @ 10 | 20 |
| | $7 40 |

Paid by Capt. S. H. Ballard, compl't's solicitor.

A. W. BRAZEE,
*Master and Examiner in Chancery.*

(Indorsed:) No. 2125. Alfred A. K. Sawyer *vs.* Robert Turner *et al.* Evidence-in-chief for complainant. Opened, published, and filed July 20, 1888. William A. Willard, clerk.

* * * * * * *

150 And afterwards and on, to wit, the 20th day of December, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

*Decree.*

151 ALFRED A. K. SAWYER *vs.* ROBERT TURNER, J. S. ALLISON, and GEORGE E. MCCLELLAND. } 2125. In Chancery. Bill to Cancel a Deed, for an Accounting, and for Other Relief.

This cause having been heretofore brought on to be heard upon the pleadings filed and proofs taken therein, and the said pleadings and proofs having been read, and Mr. S. H. Ballard, of counsel for the complainant, and Mr. A. D. Bullis, solicitor, and Mr. M. B. Carpenter, of counsel, for the defendants, having been heard, and the court having duly considered the said pleadings and proofs and arguments, it is hereby ordered, adjudged, and decreed that the defendant, Robert Turner, hath, since the 20th day of April, A. D. 1886, had the title to an undivided five-eighths of the Wallace lode, situate in Cascade mining district, in the county of Clear Creek, in the State and district of Colorado, as trustee for Alice E. Finch and her grantee, the same being more fully described in the receiver's final receipt therefor, as recorded in Book 83, at page 117, of the records of Clear Creek county, State of Colorado; that at the commencement of this suit and now the said defendant, Robert Turner, did and doth hold the title to an undivided five-eighths of said Wallace lode in trust for the complainant, Alfred A. K. Sawyer, free from incumbrance, and that this said complainant, Alfred A. K. Sawyer, is entitled to have of and from said defendant, Robert Turner, a good and sufficient conveyance therefor and thereof; that said defendants,

J. S. Allison and George E. McClelland, took whatever interest they have or may have in said Wallace lode by conveyance from said defendant, Robert Turner, subject to the paramount right of
152 the complainant, Alfred A. K. Sawyer, to an undivided five-eighths of said premises and property; that each of the said defendants, Robert Turner, J. S. Allison, and George E. McClelland, be, and they are hereby, enjoined and prohibited from in any manner conveying, incumbering, or in any manner disposing of any farther or greater interest in the said Wallace lode than an undivided three-eighths unless they shall subsequent to this date derive some greater interest from said complainant, Alfred A. K. Sawyer, or his grantees; that the complainant, Alfred A. K. Sawyer, pay to the defendant, Robert Turner, five-eighths of the costs, expenses, and disbursements which he, the said Robert Turner, was at in and about the procuring of the receiver's final receipts of and for said Wallace Lode mine at and prior to April 20th, 1886, which is hereby fixed at the sum of one hundred and six dollars and twenty-five cents, and that the same shall be paid or tendered to said Robert Turner at the time or before a conveyance of five-eighths of said premises and property shall be demanded of him by or on behalf of said complainant; that if within twenty-four hours after the said sum of one hundred and six dollars and twenty-five cents shall have been tendered to the defendant, Robert Turner, and demand made on him for a conveyance to complainant of an undivided five-eighths of said Wallace Lode mine he, the said Robert Turner, shall not have made, executed, and acknowledged such conveyance to said complainant and shall not have delivered the same to complainant or to the said S. H. Ballard, his counsel, or to some one duly authorized to receive the same for complainant, then the said complainant shall be at liberty to record a certified copy of this decree, and that when the same shall have been so recorded this decree and the record
153 thereof shall stand and be in lieu of conveyance and the record of a conveyance from said Robert Turner to said complainant of an undivided five-eighths of said Wallace lode free from all incumbrance caused by the acts or omissions of said Robert Turner, J. S. Allison, and George E. McClelland or anything done or suffered by them or either of them; that complainant have and recover from the defendant, Robert Turner, his costs, to be taxed, and that he have execution therefor as upon a judgment at law.

And afterwards and on the same day, to wit, the 20th day of December, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

*Order. Appeal Prayed.*

ALFRED A. K. SAWYER
*vs.*
ROBERT TURNER, J. S. ALLISON, and GEORGE E. MCCLELLAND.

2125. In Chancery. Bill to Cancel a Deed, for an Accounting, and for Other Relief.

At this day come the said defendants, by L. C. Rockwell, Esq., their solicitor, and pray an appeal from the decree of this court to the Supreme Court of the United States, which is allowed, conditioned that they file herein their bond, conditioned according to law, in said appeal in the sum of one thousand dollars ($1,000.00).

154 And afterwards and on, to wit, the 16th day of January, A. D. 1889, came again the said defendants, by their solicitors aforesaid, and filed in said court their bond and sued out of said court a citation to the Supreme Court of the United States, and the said bond is in words and figures as follows, to wit:

*Bond.*

THE UNITED STATES OF AMERICA,
*District of Colorado.*

Know all men by these presents that we, Robert Turner and George E. McClelland, as principals, and Henry Plummer, as surety, are held and firmly bound unto Alfred A. K. Sawyer in the full and just sum of one thousand dollars, to be paid to the said Alfred A. K. Sawyer; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the November term, A. D. 1888, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between said Alfred A. K. Sawyer as complainant and Robert Turner, J. S. Allison, and George E. McClelland *were* defendants, a decree was rendered against the said Robert Turner, adjudging he held title to the undivided five-eighths (⅝) of the Wallace lode in trust for said Alfred A. K. Sawyer, and that said Allison and McClelland took their title from Turner subject to plaintiff Sawyer's rights therein, from which decree defendants Tur-

155 ner and McClelland have prayed an appeal in open court to the Supreme Court of the United States, and the same having been allowed and a citation —, directed to the said Alfred A. K. Sawyer, citing and admonishing him to be and appear at a term of the Supreme Court of the United States to be held at Washington, D. C., on the 14th day of October next, 1889:

Now, the condition of the above obligation is such that if the said Robert Turner and George E. McClelland shall prosecute said

appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

ROBERT TURNER. [SEAL.]
GEO. E. McCLELLAND. [SEAL.]
HENRY PLUMMER. [SEAL.]

Approved.
MOSES HALLETT, *Judge.*

STATE OF COLORADO, } ss:
*County of Clear Creek,* }

Henry Plummer, surety on the within bond, being first duly sworn, deposes and says that he is worth the sum of one thousand dollars over and above all his just debts and liabilities and in property subject to levy and sale upon execution after allowing all exemptions under the laws of said State.

HENRY PLUMMER.

Subscribed and sworn to before me this 14th day of January, 1889.

ORIGIN HALL, [SEAL.]
*Notary Public.*

156 (Indorsed:) 2125. Appeal bond. Alfred A. K. Sawyer *vs.* Robert Turner *et al.* Filed Jan. 16, 1889. William A. Willard, clerk.

And the said citation is next hereto attached, to wit:

*Citation and Service.*

157–159 Citation, U. S. —— Court.

THE UNITED STATES OF AMERICA,

[Vignette.]

*District of Colorado.*

The United States of America to Alfred A. K. Sawyer, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, D. C., on the fourteenth day of October next, 1889, pursuant to an appeal prayed & allowed in open court and bond filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Robert Turner and George E. McClelland, impleaded with J. S. Allison, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said appeal mentioned, should not be cor-

rected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-nine.

MOSES HALLETT, *Judge.*

[Endorsed:] Gen. No. 2125. —— court of the United States, district of Colorado. Robert Turner & Geo. E. McClelland, appellants, *vs.* Alfred A. K. Sawyer, appellee, *appellee.* Citation. Filed in circuit court of the U. S. this 16th day of January, A. D. 1889. William A. Willard, clerk, by F. W. Tupper, deputy clerk. —— ——, attorney for plaintiff in error.

*Proof of Service.*

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

On this — day of ——, A. D. 18—, personally appeared —— —— before me, the subscriber, a clerk of the —— court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed before me this — day of ——, A. D. 18—.

—— ——, *Clerk,*

By —— ——,
*Deputy Clerk.*

Rec'd copy of the within citation this 16th day of January, 1889.

BALLARD & HODGES,
*Att'y- for Appellee.*

160 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the bill of complaint and exhibits, answer and exhibits, replication, stipulation as to facts, decree, bond, citation and service, and all orders of court heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein Alfred A. K. Sawyer was complainant and Robert Turner *et al.* were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix

the seal of said court, at Denver, in said district, this seventh day of August, A. D. 1889.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

161 Supreme Court of the United States.

ROBERT TURNER and GEORGE E. MCCLELLAND, Impleaded with J. S. ALLISON, Appellants,
*vs.*
ALFRED A. K. SAWYER, Appellee. } No. —.

Come now the plaintiffs in error, by L. C. Rockwell, their attorney, and say that in the record and proceedings aforesaid and in giving judgment in manner and form as the same is given there is manifest error, in this:

I. The court below erred in holding and decreeing that the defendant, Robert Turner, since the 20th day of April, 1886, had held the title to an undivided five-eighths of the Wallace lode as trustee for Alice E. Finch and her grantee, and by holding and decreeing that at the commencement of this suit and now said Robert Turner did and doth hold the title to an undivided five-eighths of said Wallace lode in trust for the complainant, Alfred K. Sawyer, who is entitled to have from said Turner a conveyance for such interest.

II. The court below erred in holding and decreeing that said J. S. Allison and George E. McClelland took whatever interest they had in said Wallace lode from said Robert Turner subject to the paramount right of complainant, Alfred K. Sawyer, to an undivided five-eighths of said Wallace lode.

162 III. The court below erred in deciding and holding that the title conveyed to Turner by the Government on his application for patent to the Wallace lode enured to the benefit of said Alfred K. Sawyer, who did not adverse or file any protest to said Turner's application for patent.

IV. The court below erred in ordering and decreeing that said defendant Turner must convey an undivided five-eighths of said lode to complainant, A. K. Sawyer.

Wherefore plaintiffs in error ask they be restored to all things they have lost by reason of the errors aforesaid.

L. C. ROCKWELL,
*Their Attorney.*

To Alfred A. K. Sawyer and Lucian P. Marsh, Esq., his attorney.

GENTLEMEN: You will please take notice that the foregoing errors will be relied upon to reverse the decree in this cause, and the following portions of the record ought to be printed for the information of the court in considering those errors—that is to say:

1. The complaint and so much of the exhibits attached thereto as are included within blue lines.

2. The answer of defendants.
3. The master's report.
4. The agreed statement of facts on which the case was submitted and decree rendered.
5. The decree of court.

Respectfully,

L. C. ROCKWELL,
*Attorney for Appellants.*

Having examined the above & the record, I consent the clerk may print the same at once.

LUCIUS P. MARSH,
*Att'y for Appellee.*

163 [Endorsed:] Supreme Court of the United States. 1889, October term. Robert Turner and George E. McClelland, impleaded with J. S. Allison, *vs.* Alfred A. K. Sawyer. Assignment of errors and designation & consent as to parts of record to be printed. Filed January 30, 1890. L. C. Rockwell, attorney for appellants.

Endorsed on cover: Colorado C. C. U. S. No. 1551. Robert Turner and George E. McClelland, appellants, *vs.* Alfred A. K. Sawyer. Filed January 30, 1890.

# SUPREME COURT OF THE UNITED STATES.

ROBERT TURNER and GEORGE E. MCCLELLAND, Impleaded with J. S. ALLISON, Appellants,
*vs.*
ALFRED A. K. SAWYER, Appellee.

Stipulation.

In this cause it is hereby stipulated that it is a fact that on, to wit, the seventh day of January, A. D. 1889, Marcus Finch, acting as the agent of complainant, Alfred A. K. Sawyer, tendered to Robert Turner, one of the defendants, the sum of one hundred and six dollars and twenty-five cents, lawful money of the United States, at his, said Robert Turner's, office, in Idaho Springs, Clear Creek county, in the State and district of Colorado, and at the same time and place, as such agent aforesaid, tendered said Robert Turner, for his execution, a deed, sufficiently and properly made out, to and of an undivided five-eighths of said Wallace lode mentioned in the decree appealed from, and did then and there demand of said Robert Turner that he execute the same in accordance with said decree, and that he, the said Robert Turner, did then and there refuse to accept the money so tendered, and did also refuse to execute said deed; that afterwards, on the eighth day of January, 1889, said Marcus Finch made his affidavit of the facts aforesaid and attached the same to said deed and filed the same in the office of the clerk of the circuit court of the United States for the eighth circuit and district of Colorado, in said cause of Alfred A. K. Sawyer, complainant, *versus* Robert Turner, George E. McClelland, and J. S. Allison, defendants, and that the same was a part of the record of said cause when the same was appealed to this court.

This stipulation is made so as to save the trouble and expense of motion, etc., in this court to have such balance of said record returned and printed.

Dated April 14, 1890.

S. H. BALLARD,
*Sol'r for Appellee.*
S. C. ROCKWELL,
*Att'y for Appellants.*
EDWARD LANE,
*Of Counsel for Appellee.*

[Endorsed:] No. 1551. Supreme Court of the United States. 1889, Oct'r term. Robert Turner *et al.*, appellants, *vs.* Alfred A. K. Sawyer, appellee. Stipulation and addition to record. Filed April 18, 1890.

Office Supreme Court U. S.
FILED,
DEC 12 1890
JAMES H. McKENNEY,
CLERK

IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1889.

No. 1551.

ROBERT TURNER AND GEORGE E. McCLELLAND, APPELLANTS,

*vs.*

ALFRED A. K. SAWYER, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

NOTICE OF MOTION TO DISMISS APPEAL AND AFFIRM DECREE, AND STATEMENT, BRIEF AND ARGUMENT THEREON.

S. H. DENT, *Attorney for Appellee.*

EDWARD LANE *of Counsel for Appellee.*

C. J. Kelly, Law Printer, Denver, Colorado.

IN

# The Supreme Court

OF THE

# United States.

OCTOBER TERM, A. D. 1889.

*No. 1551.*

ROBERT TURNER AND GEORGE E. McCLELLAND,

*Appellants,*

vs.

ALFRED A. K. SAWYER,

*Appellee.*

*Appeal from the Circuit Court of the United States for the District of Colorado.*

## Notice of Motion to Dismiss Appeal and to Affirm Decree.

To L. C. ROCKWELL, Esq., *Attorney for Appellants.*

SIR: Please take notice that on the 5th day of January, A. D. 1891, or as soon thereafter as counsel can be heard, I shall move this Honorable Court to dismiss the appeal in the above entitled cause, and to affirm the final decree entered herein by the Circuit Court of the United

States for the District of Colorado, when and where you may attend and oppose the same if you see proper so to do.

Respectfully,

S. H. DENT,
*Attorney for Appellee.*

EDWARD LANE,
*Of Counsel for Appellee.*

Dated this 29th day of November, A. D. 1890.

Received a copy of above notice and the within motion, brief and argument this 29th day of November, A. D. 1890.

L. C. ROCKWELL,
*Attorney for Appellants.*

## SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1889.

No. 1551.

ROBERT TURNER AND GEORGE E. McCLELLAND, *Appellants*, vs. ALFRED A. K. SAWYER, *Appellee.* } *Appeal from the Circuit Court of the United States for the District of Colorado.*

### Motion to Dismiss Appeal and to Affirm Decree.

Now comes said appellee Alfred A. K. Sawyer, by S. H. Dent, his attorney, and E. Lane, of counsel, and moves this Honorable Court to dismiss the appeal in this cause and to affirm the final decree heretofore entered herein in the Circuit Court of the United States for the District of Colorado, and assigns therefor the following reasons:

BECAUSE: 1st. Said appeal is not taken by all the defendants affected by said final decree in said suit.

BECAUSE: 2d. The final decree entered in the Circuit Court of the United States for the District of Colorado, in favor of said Alfred A. K. Sawyer, remains without appeal so far as the same affects the interests of defendant, J. S. Allison, in the property described in said final decree. And as there was no summons and severance, or equivalent proceedings in said Circuit Court as to said Allison, the appeal taken by said Turner and McClelland is improper, irregular and void, and should be dismissed.

BECAUSE: 3d. The said appellee, Alfred A. K. Sawyer, having a right to have said appeal dismissed for said above mentioned causes, and, that said right existing, the decree of the Circuit Court should be affirmed.

## STATEMENT.

The facts in this case, so far as they appertain to this motion, are:

That on the 20th day of April, A. D. 1886, appellant Robert Turner obtained a receiver's receipt from the United States Land Office at Central City, State of Colorado, in a proceeding theretofore prosecuted by him to procure a United States patent to himself alone, for the Wallace Lode, situate in Cascade mining district, Clear Creek County, State of Colorado.

(Printed Record, pages 10 and 11; Original Record, page 20.)

That on the same day, April 20, 1886, said Robert Turner, assuming to own the whole of said Wallace Lode, attempted to convey, by deed, to one J. S. Allison (one of the defendants in this cause in the Court below), an undivided one-fourth interest in said property, and which said deed was duly recorded May 19, 1886 (see Printed Record, pages 50–51), and said Turner also by deed attempted to convey to said George E. McClelland, one of the appellants herein, another undivided one-fourth interest in said property, which last said deed is Exhibit 16 to complainant's (appellee's) bill, and was duly recorded December 16, 1886, as certified by the Clerk and Recorder of Clear Creek County, Colorado, on the original Exhibit.

On the 17th day of March, A. D. 1887, the said Alfred A. K. Sawyer filed in the United States Circuit Court for the District of Colorado his bill of complaint against said Robert Turner, George E. McClelland and J. S. Allison, praying, among other things, that he be decreed to be the owner of an undivided five-eighths interest in and to the Wallace Lode, Cascade Mining District, Clear Creek County, State of Colorado.

(Printed Record, pages 1–19; Original Record, pages 1–35.)

That on the 30th day of January, A. D. 1888, said Robert Turner, George E. McClelland and J. S. Allison filed their joint answer to the said bill.

(Printed Record, pages 52–60; Original Record, pages 108–121.)

That on the 20th day of December, 1888, a final decree was made, signed and entered in said Circuit Court in said cause, decreeing to the said Alfred A. K. Sawyer an undivided five-eighths interest in and to said Wallace Lode, as prayed for in said bill, and enjoining and prohibiting the said Turner, McClelland and Allison "from in any manner conveying, encumbering, or in any manner disposing of any further or greater interest in the said Wallace Lode than an undivided three-eighths thereof, unless they shall, subsequent to this date, derive some greater interest from said complainant A. A. K. Sawyer."

(Printed Record, pages 75–76; Original Record, pages 151–153.)

That on the said 20th day of December, 1888, an appeal was prayed by said defendants to the Supreme Court of the United States, which was allowed.

(Printed Record, page 77; Original Record, page 154.)

That the said J. S. Allison did not perfect his said appeal; he did not sign the appeal bond provided therefor; did not become a party to the citation issued herein, and, as to him, there is no appeal from said decree pending in this Honorable Court.

(Printed Record, pages 77, 78, 79; Original Record, pages 154–159.)

That there was no summons and severance, nor other equivalent proceedings in said Circuit Court after said ap-

peal was allowed, and prior to filing the transcript of the Record in this Court for, or on behalf of, the appellants Turner and McClelland.

Thus it will be seen that the interests of all three were joint, and that the decree is joint likewise.

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## BRIEF.

The decree of the Circuit Court in this case was rendered against appellants Turner and McClelland and defendant Allison jointly. The interests of all three in the suit were joint, and the decree affected them all jointly and not separately. Turner and McClelland alone brought this appeal, and there being no summons and severance or other equivalent proceedings, the appeal must be dismissed. This ruling this Honorable Court holds in—

*Feibelman vs. Packard*, 108 U. S., p. 14, citing;
*Williams vs. Bank*, 11 Wheat., 414;
*Masterson vs. Herndon*, 10 Wall., 416;
*Simpson vs. Greeley*, 20 Wall., 152.

See also—

*Fuller vs. Swan River Co.*, 5 Colo., 123.

"The rule is that appeals are subject to the same rules, regulations and restrictions as are prescribed by law in cases of writs of error."

*Simpson vs. Greeley*, 20 Wall., 152.

## ARGUMENT.

This is a joint suit against the three defendants in the Court below, namely, Turner, McClelland and Allison, for an undivided five-eighths interest in the Wallace Lode, and the decree rendered in the Circuit Court of the United States, whence this appeal is taken, is a joint decree, for it is binding on and affects all of the defendants therein jointly. This is readily seen when consideration is given to the relation of said defendants to the property at the date when the suit was instituted in the Circuit Court.

At that date appellants claimed ownership as follows: Appellant Turner to an undivided one-half, appellant McClelland to an undivided one-fourth, and J. S. Allison, a defendant below, to an undivided one-fourth; and in this proportion they claimed to own in the undivided five-eighths decreed by the Circuit Court to be the property of appellee, Alfred A. K. Sawyer, and they are, until this decree is reversed, bound by it jointly. If defendant, Allison, holding by deed from appellant, Turner, was a necessary party to the suit—and there can be no question as to this in order to conclude his interests—then he is bound by the decree and took whatever interest he claimed to have in an undivided one-fourth in the said undivided five-eighths of the Wallace Lode, subject to the decreed paramount rights of appellee Sawyer. From this decree defendant Allison has not appealed, and it stands to-day as a final decree as to him. This being the case, without a summons and severance or some equivalent proceedings in the Circuit Court, can this Court reverse the decree as to the two defendants who claim to have appealed—Turner and McClelland—and at the same time let it remain unreversed as to defendant Allison, who did not appeal, and who was not severed on the Record? It is respectfully contended that such is not the

practice of this Court, and it would seem under the ruling of this Court in *Feibelman vs. Packard, supra,* that the facts pointed out in the Record warrant a dismissal of the appeal and an affirming of the decree of the Circuit Court with costs.

And this is respectfully asked.

S. H. DENT,
*Attorney for Appellee.*
EDWARD LANE,
*Of Counsel for Appellee.*

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1900**

No.

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ROBERT TURNER AND GEORGE E. McCLELLAND,
APPELLANTS,

*vs.*

ALFRED A. K. SAWYER,
APPELLEE.

---

## BRIEF OF APPELLANTS ON MOTION TO DISMISS

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By L. C. ROCKWELL,
*Attorney for Appellants.*

IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM, 1890.

ROBERT TURNER AND
GEORGE E. McCLELLAND,
*Appellants.*

*vs.*

ALFRED A. K. SAWYER,
*Appellee.*

NO. 1551.

This motion filed by appellee to dismiss this appeal is resisted upon the following grounds:

*First*—That it comes too late. That it is not made in apt time.

*Second*—That this decree is so far severable that Turner has the right to prosecute this appeal alone or jointly with McClelland and Allison or with either of them.

As to the first point, the record shows prior to filing it in this Court the parties, L. C. Rockwell representing appellants, and Lucius P. Marsh, appellee, made a stipulation that this case might be submitted under the 20th rule of this Court, and for that purpose the record might be retained by appellant to enable him to draw statement of the errors on which he intended to rely and what portion of the record should be printed and submit the same to attorney for appellee for his approval, under Rule 10 of this Court as amended, before the record was sent to this Court for filing. See printed record pp. 80-81 where L. P. Marsh Esq., attorney for appellee says he has examined such statement for printing record and consents that the clerk may print the same at once.

Acting upon such understanding, the record was not transmitted to the clerk until the twelfth day of December, 1889, but prior to that date and upon the first day of November, 1889, the appellee, Sawyer, appearing by Edward Lane, Esq., and Fillmore Beall, Esq., docketed the case and had it dismissed under Rule 9 of this Court. When appellants attorney was informed of these facts, a motion was made to re-instate, supported by a showing of the above facts; which motion was granted, and on January 30, 1890,

this cause was placed upon the docket as No. 1551 and the record printed. After the record had been examined by appellee's attorney and such portion designated printed with his approval, it seems to me this cause should not be dismissed because irregularly brought to this Court.

After the cause was re-instated, Judge Marsh ceased to be attorney for appellee and S. H. Ballard, Esq., took his place, and upon April 14, 1890, attorneys for appellee presented to L. C. Rockwell, Esq., attorney for appellants a stipulation in words and figures following:

Supreme Court of the United States.

ROBERT TURNER AND GEORGE E. MCCLELLAND, Impleaded with J. S. ALLISON, Appellants, *vs.* ALFRED A. K. SAWYER, Appellee. } Stipulation.

"In this case it is hereby stipulated that it is a fact that, on to wit: the seventh day of January, A. D. 1889, Marcus Finch, acting as the agent of complainant Alfred A. K. Sawyer, tendered to Robert Turner, one of the defendants, the sum of one hundred and six dollars and twenty-five cents, lawful money of the United States, at his, said Robert Turner's office, in Idaho Springs, Clear Creek county, in the State and district of Colorado, and at the same time and place, as such agent aforesaid, tendered said Robert Turner, for his execution, a deed sufficiently and properly made out, to and of an undivided five-eighths of said Wallace lode, mentioned in the decree appealed from, and did then and there demand of said Robert Turner that he execute the same, in accordance with said decree; and that he, the said Robert Turner, did then and there refuse to accept the money so tendered, and did also refuse to execute said deed; that afterwards, on the eighth day of January, 1889, said Marcus Finch made his affidavit of the facts aforesaid, and attached the same to said deed, and filed the same in the office of the Clerk of the Circuit Court of the United States for the Eighth Circuit and District of Colorado, in said cause of Alfred A. K. Sawyer, complainant, *versus* Robert Turner, George E. McClelland, and J. S. Allison, defendants, and that the same was a part of the record of said cause, when the same was appealed to this Court.

This stipulation is made so as to save the trouble and expense of motion, etc., in this Court to have such balance of said record returned and printed.

Dated April 14, 1890.

S. H. BALLARD,
*Solicitor for Appellee.*
L. C. ROCKWELL,
*Attorney for Appellants.*
EDWARD LANE,
*Of Counsel for Appellee.*

The reasons now urged for dismissing this appeal, if well founded, should have been urged against the re-instating of this case. It is an irregularity which appellee has waived. This Court, in case of Masterson assignee *vs.* Howard *et al.*, 10 Wall. 416, speaking by Miller, in the decision of a similar motion, says: "In chancery cases, all the parties against whom a joint decree is rendered must join in the appeal, or it will be dismissed. There are two reasons for this:

1. That the successful party may be at liberty to proceed in the enforcement of his decree against the parties who do not care to have it revived.

2. That the appellate tribunal shall not be required to decide a second or third time the same question on the same record."

Williams *vs.* Bk. U. S., 11 Wheat., 414.
Owens *vs.* Kincannon, 7 Pet., 399.
Wilson *vs.* Ins. Co., 12 Pet., 140.

Neither of the above reasons go to the jurisdiction of this Court. The last one assigns a question of policy as a reason for dismissal. The above reasons are those assigned by this Court in nearly, if not quite, every case where this Court assumed to give any reason for dismissal, because all parties against whom a joint judgment or decree is rendered should join in the appeal.

In Owens *vs.* Kincannon, 7 Peters, Marshall, C. J., said that an appeal was irregularly brought where part only of the defendants joined therein against whom a joint judgment had been rendered.

The same language was used by this Court, speaking through Chase, C. J., in Hampton *et al. vs.* Rouse, 13 Wall., 187, which was a case brought here on error.

In no case has this Court held the irregularity complained of was jurisdictional, although considered important, hence I insist appellee has waived his right to now raise this question.

*Second*—The decree appealed from is so far severable, Sawyer can prosecute the appeal alone. The object and purpose of the suit was to have Turner (who held the legal title to the Wallace lode under certain letters patent from the United States,) declared to be a trustee as to the undivided five-eights of said lode for A. A. K. Sawyer. McClelland and Allison were made parties defendant, because they claimed some interest in the Wallace lode under Turner after he obtained such title.

Attached to the complaint were several interrogatories propounded to Turner, pp. 15-18 print, and the prayer of the complaint is for relief against the acts of Turner, and is substantially as follows, pp. 18-19:

That your orator's interest in said Wallace lode may be adjudged and decreed to be an undivided five-eights thereof (5/8).

That said deed made to the said Robert Turner by the sheriff of said Clear Creek county, Colorado, under said certificate of sale, issued to the said A. K. White and assigned to the said Robert Turner as aforesaid, under the execution in favor of the

affidavit, which is filed for the purpose of showing said Allison no longer has any right, title or interest in the subject-matter of this suit. And further deponent says not.

GEORGE. E. McCLELLAND.

Subscribed and sworn to before me this 27th day of December, 1890.

A. D. BULLIS,
*Notary Public.*

My commission expires March 5, 1892.

This court in passing upon a similar motion to this, speaking by Miller, J., *in re* Masterson 10, Wall. 418, *supra*, says: "We do not attach importance to the technical mode of proceeding called summons and severance. We should have held this appeal good if it had appeared in any way by the record that Maverick had been notified in writing to appear, and that he had failed to appear, or, if appearing, had refused to join."

When the record is silent as to the value of the property in dispute, the defect is supplied by an affidavit as I understand the practice. It strikes me that the showing here made that Allison has parted with all interest in the subject matter of the litigation now fully appears and the irregularity in the appeal is cured. If this appeal is dismissed I do not see how another can be made to operate as a *supersedeas*, which to these appellants is very important.

Respectfully submitted,

L. C. ROCKWELL,
*Attorney for Appellants.*

Office Supreme Court U. S.
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CLERK

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1891.

## No. 1551.

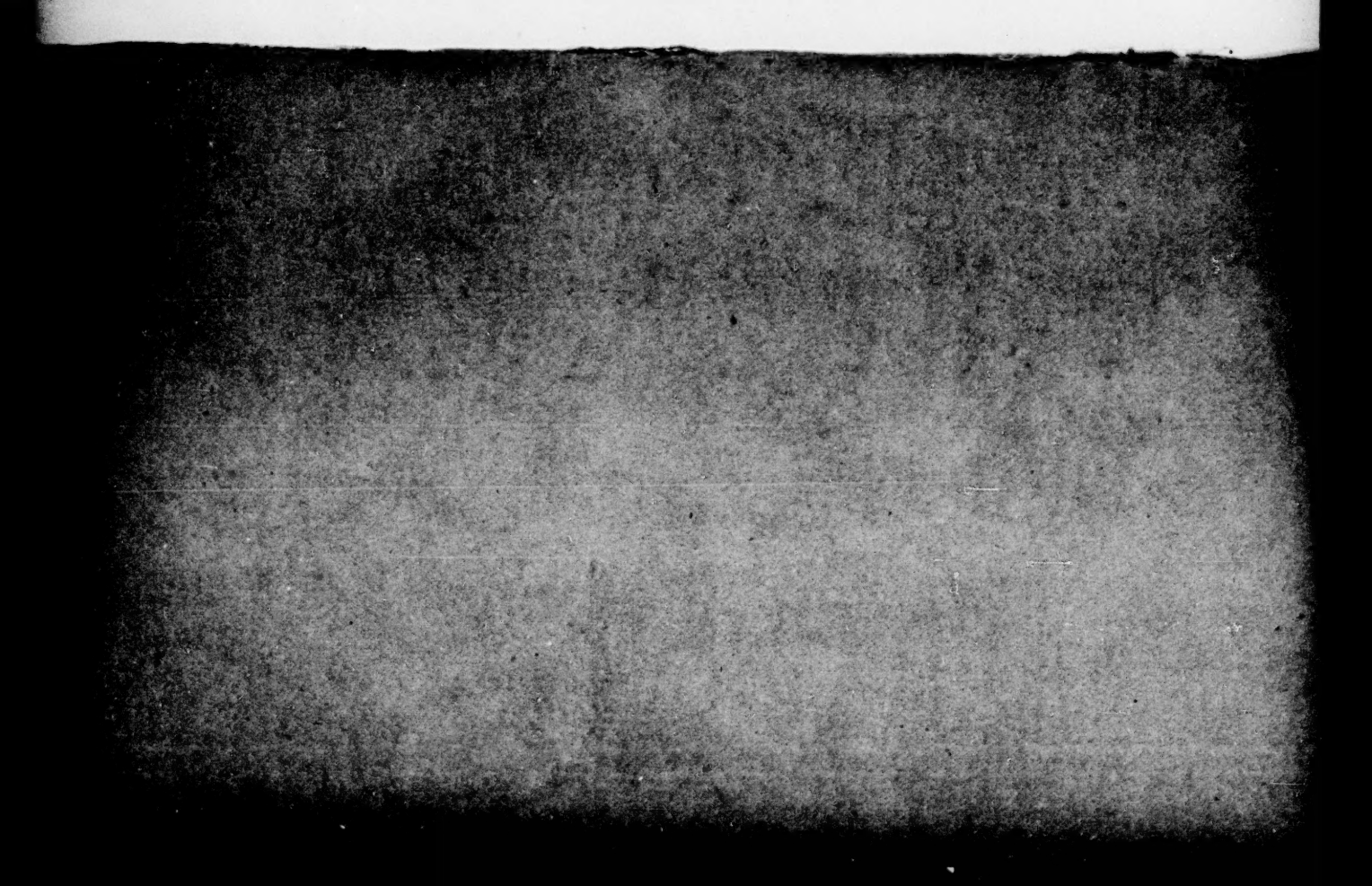
ROBERT TURNER AND GEORGE E. McCLELLAND, APPELLANTS,

AGAINST

ALFRED A. K. SAWYER, APPELLEE.

BRIEF AND ARGUMENT OF APPELLANTS.

L. C. ROCKWELL AND A. D. BULLIS,
*Attorneys for Appellants.*



# SUPREME COURT OF THE UNITED STATES.
## OCTOBER TERM, 1891.
## No. 1551.

ROBERT TURNER AND GEORGE E. McCLELLAND, IMPLEADED WITH J. S. ALLISON, APPELLANTS,
vs.
ALFRED A. K. SAWYER, APPELLEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF COLORADO.

This is an appeal from a decree rendered by the United States Circuit Court for the District of Colorado on the 20th of December, 1888, in the case of Alfred A. K. Sawyer against Robert Turner, George E. McClelland and J. S. Allison. The appellants here were defendants below. Allison does not join in this appeal, but has filed his consent that his co-appellants may prosecute it.

The case was this: Alfred A. K. Sawyer, on the 17th of March, 1887, claimed to own an undivided five-eighthts interest in the Wallace lode which had been previously patended by the government to Robert Turner, who had conveyed certain interest in that lode to his co-defendant McClelland and Allison. This bill was filed by Sawyer to have Turner declared a trustee for his use and to compel him to reconvey to complainant the undivided five-eighths of said lode.

The prayer for this specific relief is as follows (print 19):

"That the receiver's receipt, so called, issued by the receiver of the United States Land Office at Central City, Colorado, to the said Robert Turner, as hereinbefore set forth, be set aside and held for naught.

"That in the event a patent for said Wallace lode is issued to the said Robert Turner upon his said application therefor, now pending — the office of the Commissioner of the General Land Office of the United States, that the said Robert Turner be adjudged and decreed to be the trustee of the title for the use of your orator for an undivided five-eights part of and interest in the said Wallace lode, and that he be directed by decree of this Court to convey to your orator by proper and ample deed or deeds an undivided five-eights of the said Wallace lode, and that in default thereof your orator may have leave to record in the office of the recorder in and for said Clear Creek county, Colorado, a certified copy of the decree of this Court in this cause, and that the same, when so recorded, shall stand and be in lieu of and have the same effect as a conveyance from the said Robert Turner to your orator."

The case was submitted upon an agreed statement of facts which were substantially as follows:

Sept. 20th, 1878, John Clark discovered and located the Wallace lode, Ex. "A" (print 64).

On August 12th, 1882, he sold and conveyed a three-fourths (¾) interest therein to Amos Sawyer and Marcus Finch, Ex. "D" (print 65).

May 1st, 1882, John Clark conveyed the other one-fourth (¼) interest to William Hunter, but that deed was never recorded, the parties supposing it to be lost, on October 25th 1882, made another deed to take its place and Marcus Finch witnessed the last deed, Ex. "E" (print 65).

On October 26th, 1882, Amos Sawyer and Marcus Finch reconveyed the undivided one-half (½) of this lode to John Clark, Ex. "F" (print 65).

January 8th, 1883, Marcus Finch conveyed an undivided one-eighth (⅛) of the Wallace lode to Alice E. Finch, Ex. "H" (print 65).

On March 16th, 1883, John Clark and William Hunter conveyed three-fourths (¾) of the Wallace lode to Amos Sawyer and John S. Sanderson, Ex. "I" (print 66).

On January 12th, 1885, Amos Sawyer made a deed to the undivided one-half (½) of Wallace lode to the complainant, A. A. K. Sawyer, Ex. "L" (print (67).

March 16th, 1886, A. A. K. Sawyer conveyed all his interest in and to said lode to Alice E. Finch, Ex. "M" (print 67).

November 3d, 1886, Alice E. Finch conveyed all her interest in Wallace lode back to A. A. K. Sawyer, Ex. "N" (print 67).

Complainant claims such conveyance gave Sawyer a title to an undivided five-eighths interest in the Wallace lode.

Defendants contend that on the 16th day of March, 1883, John Sanderson and Amos Sawyer were the owners of an undivided three-fourths of said lode, and while such owners, one John F. Teal, on the 13th of August, 1883, filed a lien upon their interest for annual labor done upon the lode at their request for that year (print 4), and on the 6th day of March, 1884, through proper legal proceedings in the County Court of Clear Creek county, established his lien, and afterwards and on the 2nd day of June, 1884, proceeded to sell the interest of John Sanderson in said Wallace lode to pay the amount of the decree, at which sale A. K. White became the purchaser, and took his certificate of purchase from the sheriff and sold and assigned it to Turner, who obtained a sheriff's deed upon it on the 3rd of March, 1885, (print 45). Turner did the annual labor on the claim for the year 1884, before he obtained his sheriff's deed, after which he published a forfeiture notice under Sec. 2324, R. S. U. S., and directed the same to A. K. Sawyer, dating such notice April 24th, 1885, (print 10). And afterwards and about November 1st, 1885, (print 11),commenced proceedings in U. S. Land Office for a patent for said Wallace lode in his own name, which ended by entry of that lode in U. S. Land Office on April 20th, 1885, and which entry was subsequently followed by patent.

They propose to treat the patent as valid, and we therefore maintain Turner's title under his patent is unassailable by Sawyer for the following reasons:

I.

Because at the time the entry was made in the land office, he had no interest in the Wallace lode, having conveyed all his rights therein to Alice E. Finch on the 16th day of March previous (print 67).

II.

Neither he nor his grantors adversed Turner's application for patent under Sec. 2324 of the R. S. U. S. and by failing so to do their rights in the property, whatever they may have been, became extinguished.

The decree reads:

"It is hereby ordered, adjudged and decreed that the defendant, Robert Turner, hath since the 20th day of April, A. D. 1886, had the title to an undivided five-eights of the Wallace lode, situated in Cascade mining district, in the county of Clear Creek, in the State and district of Colorado, as trustee for Alice E. Finch and her grantee, the same being more fully described in the receiver's final receipt therefor, as recorded in book 83, at page 117, of the records of Clear Creek county, State of Colorado; that at the commencement of this suit and now the said defendant, Robert Turner, did and doth hold the title to an undivided five-eights of said Wallace lode in trust for the complainant, Alfred A. K. Sawyer, is entitled to have of and from said defendant, Robert Turner, a good and sufficient conveyance therefor; that said defendants, J. S. Allison and George E. McClelland, took whatever interest they have or may have in said Wallace lode by conveyance from said defendant, Robert Turner, subject to the paramount right of the complainant, Alfred A. K. Sawyer, to an undivided five-eights of said premises and property."

The errors aseigned are:

I.

"The court below erred in holding and decreeing that the defendant, Robert Turner, since the 20th day of April, 1886, had held the title to an undivided five-eights of the Wallace lode as trustee for Alice E. Finch and her grantee, and by holding and decreeing that at the commencement of this suit and now said Robert Turner did and doth hold the title to an undivided five-eights of said Wallace lode in trust for the complainant, Alfred A. K. Sawyer, who is entitled to have from said Turner a conveyance for said interest.

II.

The Court below erred in holding and decreeing that said J. S. Allison and George E. McClelland took whatever interest they had in said Wallace lode from said Robert Turner, subject to the paramount right of complainant, Alfred A. K. Sawyer, to an undivided five-eighths of said Wallace lode.

III.

The Court below erred in deciding and holding that the title conveyed to Turner by the Government on his application for patent to the Wallace lode enured to the benefit of said Alfred K. Sawyer, who did not adverse or file any protest to said Turner's application for patent.

IV.

The Court below erred in ordering and decreeing that said defendant Turner must convey an undivided five eights of said lode to complainant, A. K. Sawyer."

## ARGUMENT.

There is to be, as I understand, no oral argument in this case, but it is to be submitted on written briefs.

Neither complainant or his grantors having adversed

Turner's application for patent, their rights became extinguished on the issuing and delivery of the patent to Turner, whatever they may have been.

It is important to determine what interest constitutes an owner under Sec. 2324, R. S. U. S., where it says:

"Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may give such delinquent co-owners personal notice in writing or notice by publication."

Amos Sawyer was complainant's immediate grantor and co-owner in the Wallace lode with Sanderson when Turner did the annual labor in 1884.

It must, likewise, be taken as a fact that Turner was there in support of and not in hostility to the rights of complainant or Sanderson in that lode, and while it may be urged with more or less force, that as between the judgment debtor, Sanderson, and Turner, the assignee of the judgment creditor, the latter had no legal right to the ground until after the expiration of the time of redemption, yet Sawyer cannot complain at what T. did. It must be immaterial to him whether Sanderson or Turner did the annual labor for 1884; that was a charge upon the property which had to be met or else the title became forfeited, and the lode subject to be re-located on the 1st day of the succeeding year. Turner was not there in hostility to the rights of Amos Sawyer, nor those of Alice E. Finch's, but in support of them.

He went there having an inceptive title under his certificate of purchase.

I cannot better define his right than to quote from Sec. 193, Freeman on Executions:

"A PURCHASER AT AN EXECUTION SALE 'obtains an incohoate right, which may be perfected into a perfect title, without any further act than the execution of a deed, in pursuance of a sale already made. It is not a mere right to have a certain sum, charged upon the property, satisfied out of it. The sum before charged upon the land has already been satisfied by the sale, to the extent of the amount bid by the purchaser. The purchaser has already bought the land, and paid for it. The sale is simply a conditional one, which may be defeated by the payment of a certain sum by certain designated parties within a certain limited time. If not paid within the time, the right to a conveyance becomes absolute, without any further sale, or other act to be performed by anybody. The purchaser acquires an equitable estate in the lands, conditioned, it is true, but which may become absolute by simple lapse of time, without the performance of the only condition which can defeat the purchaser. The legal title remains in the judgment-debtor, with the further right in him, and his creditors having subsequent liens, to defeat the operation of a sale already made, during a period of six month, after which, the equitable estate acquired by the purchaser becomes absolute and indefeasible, and the mere, dry, naked, legal title remains in the judgment-debtor, with authority in the sheriff to divest it, by executing a deed to the purchaser.' Because, by a sale under execution, the purchaser acquires, even by the expiration of the time for redemption, an inchoate, inceptive title to the land sold, and because the sheriff's deed, when made, takes effect by relation, as of the day of the sale the purchaser's title has in California, New York and Pennsylvania been held to be subject to execution. So it is said that the estate of a tenant by elegit is

subject to execution in England. But in Maine and New Jersey, one who derives title under an execution has no interest subject to levy until the time for redemption has expired, although in the first named State, he has, by law, a perfect legal title, and not a mere equity—this legal title being defeasible on payment of the sum required to make redemption."

Under the statute of Colorado, Turner's interest under his certificate of purchase was liable to be sold under execution against him. Sec. 1883, page 606, G. S., reads:

"Every interest in land, legal and equitable, shall be subject to levy and sale under execution, and the claim or possessory right of any defendant in execution, in or to any public lands, may be levied upon and sold under execution, in the same manner as if the same were held by such defendant in fee-simple."

It is important to consider the nature of the action wherein Teal obtained his decree. It was a mechanic's lien suit in which an interest was established in the Wallace lode for work done upon it, and of course the certificate of purchase transferred that interest to Turner. He, therefore, had a greater interest in the property than he would have had if the property had been sold to satisfy a moneyed judgment.

The mechanic's lien law of Colorado, when referring to the quantity of ground to which a lien attaches, reads:

Secs. 2148, 2149, p. 666 of G. S.

Sec. 2148. "In case of a mine, mining claim or lode, except as otherwise provided, said lien shall attach to the whole thereof or to so much thereof as said owner shall have an interest.

Sec. 2149. "All such liens shall relate back to the time of the commencement to do work or to furnish materials, and shall have priority over any and every lien or incumbrance subsequently intervening, or which may have been created prior thereto, but which was not then recorded, and of which the lienor under this act had no notice."

And Sec. 2156 provides that the property should be sold by the sheriff and a redemption shall be permitted "as in the case of sales on execution." Turner was there, under claim and color of title made in good faith.

Sec. 2186 of the General Statutes State of Colorado for the year 1883 reads:

"That every person in the peaceable and undisputed possession of lands or tenements, including mining claims, under claim and color of title, made in good faith, including pre-emptions made in accordance with the laws of the State of Colorado, or any mining district wherein such property may be situated, who shall for five successive years hereafter continue in such possession, and shall also, during said time, pay all taxes legally assessed on such land, tenements or mining claims, shall be held and adjudged to be the legal owners of said lands, tenements or mining claims, to the extent and according to the purport of his or her proper title or pre-emption."

That section received a construction by the Supreme Court of the State of Colorado in the case of the Lebanon Mining Company of New York vs. Rogers, 8 Colo., page 34.

The case was this: The mining company was the undisputed owners, at the time, of the Ben Harding lode, which was patented. Rogers asserted ownership and title to the lode under

a tax deed which the Court held to be void. But following the case of McCall *vs.* Neely, 3 Watts, page 69, ruled:

"That both color and claim of title may exist without any instrument in writing, provided, such claim or color be made in good faith,"

And, perhaps, that is the doctrine of this Court, as ruled in Wright *vs.* Mattison, 18 Howard, U. S., page 56. No one ever questioned Turner's good faith in what he did. His position was anomalous for his judgment debtors, Sanderson and Finch, had no interest in seeing that the annual labor was performed in the year 1884, unless Turner did the annual labor for the year 1884.

On the first day of January, 1885, no one's title to that lode would have been good, provided a person desired to re-locate it as forfeited or abandoned property, under Sec. 2324 of the R. S. U. S. We therefore contend Turner was such an owner in the property. He had a right to advertise his co-tenants out. He was the actual owner when the notice of forfeiture was published, and we are only to deal with his rights when he did the work.

In the case of Danforth, receiver *vs.* Suydam *et al*, 4 Comstock, page 66, is a case wherein the word owner was defined. The case was this:

Under the statute of that state the owner had to claim damages for the land appropriated for the Erie canal within a certain time; failing to do so he was deemed to have surrendered to the state his interest in the premises. A subsequent statute directed damages to be appraised.

"On the application of the owner, his heirs or assigns," it was ruled that "A purchaser of the lands at a foreclosure sale was the owner rather than a creditor who thereafter acquired a lien on the original owner's personal estate."

The Court say, speaking by HURLBUT, J.:

"The term "owner" in this statute ought, I think, to be regarded as descriptive of the person who was equitably entitled to receive compensation for damages rather than as a term designating the person having a legal estate in the land."

The work which Turner did in 1884 inured to the benefit of himself and his co-tenants, whoever they may have been. He was then in the open and notorious possession of the property asserting an ownership therein.

And it is well enough to again refer to the record title as it stood up to and including the whole of the year 1884, disassociated with, and without reference to, what interest were lost or acquired through judicial proceedings. That feature of the case will hereafter be discussed.

On August 12th, 1882, the title to this property stood as follows:

Amos Sawyer and Marcus Finch . . . . . ¾
Ex. "D" (print 65).
William Hunter . . . . . ¼
Ex. "E" (print 65).

October 26th, 1882, Sawyer and Finch reconveyed ½ of the lode back to Clark, Ex. "F" (print 65). The title then stood:

| | |
|---|---|
| Clark | ½ or 4-8 |
| Hunter | ¼ or 2-8 |
| Sawyer and Finch | ¼ or 2-8 |

On January 8th, 1883, Marcus Finch conveyed all of his interest or ⅛ to his wife Alice E. Finch, Ex. "F" (print 65).

On March 16th, 1883, John Clark and William Hunter conveyed ¾ of said lode to Amos Sawyer and John Sanderson, Ex. "I" (print 66).

The title then stood:

| | |
|---|---|
| Amos Sawyer and Sanderson | ¾ or 6-8 |
| Alice E. Finch | ¼ or 2-8 |

It so remained from March 16th, 1883, to the 12th day of January, 1885, when Amos Sawyer assumed to convey ½ of the Wallace lode to complainant, A. A. K. Sawyer, Ex. "L" (print 67). It is readily seen Amos Sawyer assumed to convey more interest in the lode than he had. It is not charged in the complaint that Turner was guilty of any deception or fraud in procuring the patent. Before proceeding to advertise any of his co-tenants out a long correspondence took place between he and Marcus Finch, who is the husband of Alice E. Finch, and so charged in the bill (print 2). He was likewise agent for complainant and so styles himself in signing and verifying the bill (print 20).

Turner, on January 15th, 1885, writes Mr. Finch he was getting an abstract, preparatory to suing for the $100 assessment work, and a discussion took place between he and Finch as to who were or were not the owners of that lode during the year 1884.

Finch in his letter to Turner of January 18th, 1885, says:

"As there has never been any process of Court served on either Alice E. Finch or Amos Sawyer, they are certainly not divested of any part of their title, and I am ready to pay their *pro rata* part of the $100 expended for assessment work for 1884 without suit."

But he did not do it.

On August 10th, 1886, Mr. Finch renews his offer to pay for his principals their part of the assessment work for the years '84, '85 and '86, (print 72) and likewise in February, 1887, he again manifests his willingness to pay for the annual work for the last named years (print 73).

This Court must conclusively presume they had notice of Turner's acts in procuring the title. Certainly Mr. Finch knew all about the obtaining of the judgment, because he was party to the records and personal service was had upon him.

While the facts show that complainant received his interest in the propetty on the 12th of January, 1885. after the annual labor had been done for the year 1884, nevertheless it was very

proper to have the publication notice run to him, but I am not contending but what it would have been highly proper to have likewise directed that notice to Amos Sawyer and Alice E. Finch as well, but we contend he was not legally bound to give personal notice to any one he intended to apply for a patent. He was not bound to make himself the self-constituted agent of his co-tenants, and join them in his application.

It is as incumbent upon one co-tenant to adverse his co-tenant's application for patent as though no such relation existed, and upon that point we are sustained by the express provision of the law, as well as the construction of it by the Land Department of the Government, which is directly concerned in the administration of it, and for the convenience of the Court we quote the two sections which has an immediate bearing upon this view of the case.

Sec. 2324 reads:

"On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co owner personal notice in writing, or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures."

Sec. 2325 provides:

"A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicious place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field-notes, notices and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspuper to be

by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter within the sixty days of publication, shall file with the register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended, or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication, the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and receiver of the proper land office at the expiration of the sixty days of publication, *it shall be assumed that the applicant is entitled to a patent* upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter."

This Court, speaking by FIELD, J., in case St. Louis Smelting Co. *vs.* Kemp, 14 Otto, 636, commenting upon what was to be done under those sections, uses this language:

"The statutes provides numerous guards against the evasion of their provisions by parties seeking a mining patent, and affords an opportunity to persons in the neighborhood of the claim to come forward and present any objections they may have to the granting of the patent desired. By Sections 6 and 7 of the Act of 1872, which constitutes Sections 2325 and 2326 of the Revised Statutes, the procedure which a party seeking a patent, whether an individual an association, or a corporation, must follow, is prescribed.

1. The party must file an application in the proper land office under oath, showing a compliance with the law, together with the plat and the field-notes of the claim, or "claims in common," made by or under the direction of the Surveyor-General of the United States, showing the boundaries of the claim or claims, which must be distinctly marked by monnments on the ground.

2. Previously, however, to the filing of the application, the claimant must post a copy of the plat, with a notice of his intended application, in a conspicuous place on the land embraced in it, and file an affidavit of at least two persons that such notice has been duly posted, with a copy of the notice in the land office.

3. When such application, plat, field-notes, notice and affidavits have been filed, the register of the land office is required to publish a notice of the application for the period of sixty days, in a newspaper to be designated by him, nearest to the claim, and post such notice in his office for the same period.

4. The claimant, at the time of filing his application, or at any time thereafter within sixty days, is required to file with the Register a certificate of the United States Surveyor General that $500 worth of labor has been expended, or improvements to that amount have been made upon the claim by himself or his grantors: that the plat is correct, with such further description, by reference to natural objects or permanent monuments as shall identify the claim and furnish an accurate description to be incorporated in the patent.

5. At the expiration of sixty days the claimant is required to file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during the period of publication. If no adverse claim shall have been filed with the Register and Receiver of the proper land-office within the sixty days of publication, it is then to be assumed that the applicant is entitled to a patent upon the payment to the proper officer of $5 per acre, and that no adverse claim exists.

6. The statue then proceeds to declare that if an adverse claim is filed during the period of publication, it must be done upon the oath of the party making it, and must show the nature, boundaries and extent of such adverse claim, and all proceedings, except the publication of the notice and the making and filing of the affidavit, shall be thereupon stayed until the controversy shall have been settled by a decision of the Court of competent jurisdiction, or

the adverse claim waived. And it is made the duty of the adverse claimant within thirty days after filing his claim, to commence proceedings in a Court of competent jurisdiction to determine the question of the right of possession, and to prosecute the same with reasonable diligence to final judgment; and a failure to do so is to be deemed a waiver of his adverse claim."

Complainant was, therefore, bound, like any other individual, to set up and make known his claim in the property, to protect his rights in the manner pointed out by the statute, and, having failed in that, his rights are forever barred. The notice provided for by the statute is one for all the world, friends and enemies alike, and its effect cannot be nulified by any relation existing between mining partners.

This Court, in case of Bissell *vs.* Foss, 114 U. S. R. 252, (in a case between mining partners,) speaking by WOODS, J., says:

"It is true that one or two or more tenants in common, holding by a common title, cannot purchase an outstanding title or incumbrance upon the joint estate for his own benefit. Such a purchase inures to the benefit of all, because there is an obligation between them resulting from their joint claim and community of interest, that one of them shall not effect the claim to the prejudice of the others. Rothwell *vs.* Deweese, 2 Black, 613 (67 U. S. bk. 17, L. ed. 309;) VanHorn *vs.* Fonda, 5 Johns, ch. 388; Lloyd *vs.* Lynch, 28 Pa. St., 419; Downer *vs.* Smith, 38 Vt., 464.

"But this rule cannot apply to Bissell and Foss. They purchased no outstanding title or incumbrance to the prejudice of the other tenant in common. They did what any tenant in common with entire good faith might do, namely: purchase the interest of some of their co-tenants without consulting the others. The title which they purchased of the Missourians was not antagonistic to the title of Bissell. Their purchase did not in any degree tend to injure or damage his interest. His share was just as valuable after as before the purchase and his rights were the same. In such a purchase no trust or confidence is violated.

Nor do we think that the relations of the parties as partners prohibited Foss and Hunter from making the purchase in question for their own benefit, to the exclusion of Bissell. The association of Bissell, Foss, Hunter, and the Missourians was not an ordinary partnership. It was what is known as a mining partnership, which is a partnership *sub modo* only, and is thus described by Mr. JUSTICE FIELD, in Kahn *vs.* Smelting Co., 102 U. S., 641 (Bk. 26, L. ed., 266).

"Mining partnerships, as distinct associations, with different rights and liabilities attaching to their members from those attaching to members of ordinary trading partnership, exist in all mining communities; indeed, without them, successful mining would be attended with difficulties and embarrassments much greater than at present."

He then quotes a passage from the opinion in Skillman *vs.* Lachman, 23 Cal., 203, to the effect that a mining partnership is governed by many of the rules relating to ordinary partnership, but also by some rules peculiar to itself, one of which is that one person may convey his interest in the mine and business without dissolving the partnership, and then proceeeds as follows:

"The same doctrine is asserted in numerous other cases, not only in that Court, but in the Courts of England. Associations for working mines are generally composed of a greater number of persons than ordinary trading partnerships; and it was early seen that the continuous working of a mine, which is

essential to its successful development, would be impossible, or at least attended with great difficulties, if an association was to be dissolved by the death or bankruptcy of one of its members or of the assignment of his interest. A different rule from that which governs the relation of members of a trading partnership to each other was therefore recognized as applicable to the relations to each other of members of a mining association. The *delectus personae*, which is essential to constitute an ordinary partnership, has no place in these mining associations. Duryea *vs.* Burt, 28 Cal., 569; Settembre *vs.* Putnam, 30 Cal., 490; Taylor *vs.* Castle, 42 Cal., 367."

This case settles two propositions: First, that the members of a mining association have no right to object to the admission of a stranger into the association who buys the share of one of the associates; and second, that the sale and assignment by one of the associates, of his interest, does not dissolve the mining partnership. It follows from these propositions, that one member of a mining partnership has the right, without consulting his associates, to sell his interest in the partnership to a stranger, and that such a sale injures no right or property of the other associates. Much less does a purchase by one associate of the share of another, inflict any wrong upon the other members of the partnership. There is no relation of trust or confidence between mining partners which is violated by the sale and assignment by one partner to a stranger, or to one of the associates, of his share in the property and business of the association.

In Smiley *vs.* Dichenson, 1st Penrose & Watts, Pa. 439, was a case much like this: One tenant in common made application to the Government, and procured a patent to the land in which they were both interested, and the Court ruled obtaining a patent was not purchasing an outstanding title, and the other co-tenant had no interest in the property after the patent had issued.

In Henshaw vs. Bissell, 18 Wallace, p. 255, which was a case where the Government had issued two patents for the same land, upon a confirmation of grants made by the Mexican Government, Bissell claimed, under the junior patent, issued upon the earlier grant; Henshaw, upon the senior patent, issued upon the latter grant. The law under which such conflicting rights were settled provided that the Surveyor-General of Cali., when he had completed and plotted the survey of any confirmed claim, should give public notice of the fact in the newspapers for the period of four weeks, during which time any party having an interest in the survey and location had a right to intervene, and the matter was then referred to the Court for adjudication. Whereupon another notice was published to the parties interested, that such objection had been made to the survey and location and admonishing them to intervene for the protection of their interest, and have their day in Court. Whereupon the Court could proceed to hear and determine the matter according to law and justice, and failing so to do they could not subsequently be heard; that their rights were barred.

This Court, to our knowledge, has not been called upon to pass upon the precise question as to the necessity of one tenant in common adversing his co-tenant's application for a patent. Senator Teller, while Secretary of the Interior, ruled upon the point in case of the application of the Grampion Silver Mining Co. for a patent to the Grampion lode located in Utah, wherein he held that one tenant in common must adverse the same as anyone else, and in case they failed to do it all their rights after the patent issued were gone.

The decision is found in the *Washington Law Reporter* of September 13, 1882. The facts in that case appear to have been that the Grampion company bought the lode from four, out of eight co-owners, these four claiming that the remaining four had failed to do the annual assessment work and had forfeited their interest by omitting to pay their share thereof, pursuant to notice under oath alleged to have been addressed to them. It did not appear from the report of the case how the notice was served, neither did it appear but that the delinquents finally paid their assessments, but the Grampion company applied for a patent and its co-owners failed to adverse.

The Commissioner of the General Land Office held, that as no evidence had been submitted showing in what manner the notice of forfeiture was served upon the delinquent co-owners, or that the delinquent co-owners did not in the required time pay their proportionate share of the annual expenditures, the company must show, before issue of patent, the manner of serving the notice and that the delinquent co-owners did not pay their said proportion.

The learned Secretary said:

"Section 2324 of the R. S. U. S. must be construed in connection with section 2325. Both have reference to the possessory title of an applicant for patent and the mode of acquiring patent; the latter providing that if no adverse claim is filed during the period of publication, it shall be assumed that none exists. It would, therefore, seem immaterial, after proceedings under section 2325, whether or not the requirements of section 2324 are complied with to the extent named in your decision; because, if parties have not been properly notified, or have paid their share of assessment work, they must still file their adverse claim under the proceedings contemplated in section 2324. *They waive their rights by failure to file such claim*, and upon such failure the law not only assumes that no such claim exists, but if the antecedants, publication and attendant proceedings have been regular, all that might be set up by suit in Court has been adjudicated in favor of the applicant."

This decision is borne out by the reason upon which the law is based. It is, that everybody having adverse interests to the applicant must adverse or their rights will be gone.

Freeman on C. & T., Sec. 155, says:

"As the rule forbidding the acquisition of adverse titles by a co-tenant from being asserted against his companions, is always said to be based upon considerations of mutual trust and confidence, supposed to be existing between the parties, the question naturally arises whether the rule is applicable where the reason on which it is based are absent."

Then it speaks of joint tenants, tenants by entirety and co-parceners always holding by and under the same title, and declares:

"Their union of interest and of title is so complete, that such relation of trust and confidence unavoidably results therefrom that neither will be permitted to act in hostility to the interests of the other with reference to the joint estate. Tenants-in-common, on the other hand, may claim under separate conveyances and through different grantors. Their only unity is that of right to the possession of the common subject of the ownership. As their connection is not necessarily so intimate as that of other co tenants, it may well be doubted whether they should always be subject to the restraints imposed upon the others * * * The author says: 'An examination of the decisions clearly shows that tenants-in-common are not necessarily prohibited from asserting an adverse title. If their interests accrue at different times, and under different instruments, and neither has superior means of information respecting the state of the title, then either may acquire and assert a superior outstanding title, especially where the co-tenants are not in joint possession of the premises.'"

Roberts *vs.* Thorn, 25 Texas, 736.
Frentz *vs.* Klotsch, 28 Wis., 317.
Wright *vs.* Sperry, 21 Wis., 331.
Brittin *vs.* Handy, 20 Ark., 381.
Matthews *vs.* Bliss, 22 Pick., 48.

The bill alleges (print 4) that Clark and his grantees, or some of them, had continuous and unbroken possession of said mining claim from the time of its discovery to the 20th of November, 1884, when they were dispossessed by Turner.

It then sets up the title under which Turner assumed to take and hold possession of said Wallace lode and the title on which he based his right for a patent; and alleges no reason nor excuse for a failure to adverse said application for a patent. Upon that point it is silent.

We then have a complainant who admits his grantors were dispossessed at the time he received his title and before any steps were taken to procure a patent, and he was likewise dispossessed of the property and he knew it. He also knew Turner was about to sue for contribution for the annual labor on the claim for the year 1884, and alleges Marcus Finch was his agent and the agent of Alice E. Finch, who was his immediate grantor, and on January 18th, 1885, before steps had been taken to procure a patent, and without alleging he did not know of Turner's intention to apply for a patent, and by also alleging at that time there was a dispute with defendant, Turner, who claimed to own a 7/8 of the Wallace lode and conceded only 1/8 to complainant or Alice E. Finch, and yet he obtained a decree for the undivided 5/8 of this lode as against the man whom, he says, was wrongfully setting up and claiming title to the property. The decree in this behalf must necessarily be wrong. If, under these circumstances, a person is not compelled to adverse in order to protect his rights, it is difficult to conceive of a case in which a person would lose his interest in mining property by failing to adverse.

If this Court has any doubt about the correctness of this proposition, it should adopt the views of Senator Teller, because authorities are not wanting in this Court, that in cases of doubt, the Court will not lightly disturb an interpretation of the public laws placed thereon by the executive department of the government.

JUSTICE TRIMBLE said in the case of Edward's, lessee *vs.* Darby (12 Wheaton, 203–210) that such uniform interpretation by the executive department was "entitled to very great respect." JUSTICE STORY, in United States *vs.* State Bank of North Carolina (6 Pet. 29–34), that it "would of itself furnish strong grounds for a liberal construction." JUSTICE MILLER, in Peabody, collector, *vs.* Stark (16 Wall, 240–243), that "in the absence of a clear conviction on the part of members of the Court, on either side of the proposition in which all can fully unite, we incline to adopt the uniform ruling of the office of the Internal Revenue Commissioner." JUSTICE SWAYNE, in United States *vs.* Moore (95 U. S. 760–763), that "it ought not to be overruled without cogent reasons." CHIEF JUSTICE WAITE, in the case of United States *vs.* Pugh (99 U. S. 265–269), a case which he says is "by no means free from doubt," calls the principle contended for "a familiar rule of interpretation." JUSTICE WOODS, in the case of Brown *vs.* the United States (113 U. S. 568–571), after stating that if the question under consideration were a new one, "the true construction of the section would be open to doubt," concludes that the principle contended for "in a case of doubt, ought turn the scale." JUSTICE HARLAN, in the case of the United States *vs.* Philbrick (120 U. S. 52–59), says, "since it is not clear that the construction was erroneous, it ought not now be overturned." JUSTICE BLATCHFORD said in United States *vs.* Hill (120 U. S. 169–182), "that the principle contended for has been applied by the Supreme Court as a wholesome one for the establishment and enforcement of justice between the government and those who put faith in the action of its constituted authorities, judicial, executive and administrative;" and JUSTICE FIELD, in Robertson *vs.* Downing (127 U. S. 607–613), that "it ought not to be overruled without cogent reasons."

If we are right in the above contention, it follows all the Assignment of Errors are well taken, and the decree must be reversed.

Respectfully submitted,

L. C. ROCKWELL,
A. D. BULLIS,
*Attorneys for Appellants.*

Office Supreme Court U. S.
FILED.
JAN 5 1891
JAMES H. McKENNEY,
CLERK.

# Supreme Court of the United States.

**OCTOBER TERM, 1890.**

*No. 1108.*

ROBERT TURNER *et al.*, APPELLANTS,

*vs.*

ALFRED A. K. SAWYER.

## APPENDIX TO BRIEF FOR APPELLANTS.

(Certified copy.)

This indenture, made the tenth day of February in the year of our Lord one thousand eight hundred and ninety between Joseph S. Allison of the city of St. Louis and State of Missouri, party of the first part, and Charles A. Gehrmann of the county of Clear Creek and State of Colorado, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of fiftydollars $\frac{00}{100}$, in lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto

the said party of the second part, and to his heirs and assigns the property to wit: All of my interest in the Wallace lode, survey No. 2256 and in the Cecil lode survey No. 428 situated in Cascade mining district Clear Creek county, State of Colorado together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances: to have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOSEPH S. ALLISON. [SEAL.]

Signed, sealed and delivered in presence of
R. M. NOONAN.

STATE OF MISSOURI, }
*City of St. Louis.* } *ss.*

I, Ben. Von Phul a notary public in and for said city, in the State aforesaid, do hereby certify that Joseph S. Allison is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this tenth day of February A. D. 1890.

[L. S.] BEN. VON PHUL.

My commission expires July 19th, 1893.

Filed for record the 15th day of February A. D. 1890 at 12½ o'clock p. m.

B. C. CATREN, JR.,
*Recorder.*

STATE OF COLORADO, } ss.
*Clear Creek County.* }

I hereby certify that the foregoing is a true, correct and complete copy of the deed Joseph S. Allison to Chas. A. Gehrmann as the same appears of record at page 611 of Book No. 83 of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 27th day of December 1890.

[SEAL.] B. C. CATREN, JR.,
*Clerk and Recorder.*

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(Certified copy.)

This indenture, made the fifteenth day of February in the year of our Lord one thousand eight hundred and ninety between Charles A. Gehrmann of the county of Clear Creek and State of Colorado, party of the first part, and George E. McClelland, Robert Turner and Bella Ward of the county of Clear Creek and State of Colorado, parties of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part, the receipt whereof is hereby ac-

knowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns all my interest in and to a certain mineral lode mining claim known and designated as the "Wallace" lode U. S. survey No. 2256—also all of my interest in and to a certain mineral lode mining claim known and designated as the "Cecil" lode, U. S. survey No. 428. Said lodes are situate in Cascade mining district, Clear Creek county and State of Colorado Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances; and the said Charles A. Gehrmann, party of the first part, for his heirs, executors and administrators, does hereby covenant with the said parties of the second part their heirs and assigns, that the said party of the first part at the request of the said parties of the second part their heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said parties of the second part their heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed, as by the said parties of the second part their heirs and assigns, or their counsel learned in the law, shall be reasonably advised and

required. To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident unto the said parties of the second part their heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

CHAS. A. GEHRMANN. [SEAL.]

Signed, sealed and delivered in presence of—

——— ———.

——— ———.

STATE OF COLORADO, } ss.
*Clear Creek County* }

I, Origin Hall a notary public in and for said county, in the State aforesaid, do hereby certify that Chas. A. Gehrmann personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

I further certify that my commission expires Jan. 12, 1891.

Given under my hand and seal, this 17th day of February, A. D. 1890.

[L. S.] ORIGIN HALL,
*Notary Public.*

Filed for record the 26th day of February 1890 at 12½ o'clock p. m.

B. C. CATREN, JR.,
*Recorder.*

STATE OF COLORADO } ss.
*Clear Creek County* }

I hereby certify that the foregoing is a true correct and complete copy of the deed Chas. A. Gehrmann to Geo.

E. McClelland *et al.* as the same appears of record at page 121 of Book No. 101 of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 27th day of December 1890.

[SEAL.] B. C. CATREN, JR.,
*Clerk & Recorder.*

[Endorsed :] Supreme Court U. S. 1890, October term. No. 1108. Robert Turner & *al.*, app'ts, *vs.* Alfred A. K. Sawyer. Certified copies of deeds filed by app'ts. Filed Jan'y 5, 1891.

IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No.

---

ROBERT TURNER AND GEORGE E. McCLELLAND,
IMPLEADED WITH J. S. ALLISON,
APPELLANTS,

*vs.*

ALFRED A. K. SAWYER,
APPELLEE.

---

Notice, Appearance for J. S. Allison and Authority Given L. C. Rockwell to Appear for Him.

---

By L. C. ROCKWELL,
*Attorney for Appellants.*

IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM, 1890.

ROBERT TURNER AND
GEORGE E. McCLELLAND,
IMPLEADED WITH
JOSEPH S. ALLISON,
*Appellants.*

*vs.*

ALFRED A. S. SAWYER,
*Appellee.*

*To S. H. Dent; Esq., and Edward Lane, Esq., Attorneys for Appellees:*

GENTLEMEN—Please take notice that on Monday the twelfth day of January, instant, at the incoming of Court upon that day, or as soon thereafter as counsel can be heard, appellants will ask leave of Court to file a paper wherein Joseph S Allison's appearance is entered in said Court and he consents that this action may be prosecuted in the name of Robert Turner and George E. McClelland, a copy of which motion, copy of appearance, as well as the statement of said Allison authorizing his appearance to be entered, is herewith served upon you.

L. C. ROCKWELL.

IN THE

# SUPREME COURT OF THE UNITED STATES.

ROBERT TURNER AND
GEORGE E. McCLELLAND,
IMPLEADED WITH
JOSEPH S. ALLISON,
*Appellants.*

*vs.*

ALFRED A. S. SAWYER,
*Appellee.*

I hereby enter my appearance in this cause for Joseph S. Allison, and consent this cause may be heard and determined as to Robert Turner and George E. McClelland, appellants, and state that said Allison does not intend to have the decree against him in this action reviewed.

L. C. ROCKWELL,
*Attorney for J. S. Allison.*

Received copy of above motion and appearance, also copy of statement authorizing L. C. Rockwell to enter the appearance of said Allison in this cause in this Court.

SIDNEY H. DENT,
*Attorney for Appellee.*

DENVER, January 5, 1891.

IN THE

# SUPREME COURT OF THE UNITED STATES.

ROBERT TURNER AND
GEORGE E. McCLELLAND,
IMPLEADED WITH
JOSEPH S. ALLISON,
*Appellants.*

*vs.*

ALFRED A. S. SAWYER,
*Appellee.*

---

I hereby authorize and direct L. C. Rockwell to enter my appearance in the Supreme Court of the United States in this cause and consent, on my behalf, the same may be heard, as I do not intend to have the decree against me reviewed.

JOSEPH S. ALLISON,

Witnessed by P. J. GAFFNEY.

ST. LOUIS, MO., January 1, 1891.

No. 70.

Office Supreme Court U. S.
FILED.
NOV 4 1893
JAMES. H. McKENNEY,
CLERK.

IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM, A. D. 1893.

ROBERT TURNER, *et al.*,
*Appellants*

*vs.*

ALFRED A. SAWYER,
*Appellee*

Lewis C. Rockwell, of lawful age, being first duly sworn, deposes and says:—

He resides in Denver, State of Colorado. That he is the attorney for Appellants in this action.

That he has not been served with any brief or Argument of Appellee, and if one has been filed he is in ignorance of that fact.

That no one will represent Appellants when the case is called for hearing. That he objects to the postponement of the submission of this cause in order to give Appellee an opportunity of filing his brief.

LEWIS C. ROCKWELL

Subscribed and sworn to before me this 30th day of October, 1893. My commission expires December 13th, 1894.

ANDREW R. DAVISON,
*Notary Public.*

IN THE

# SUPREME COURT

OF THE

# UNITED STATES.

OCTOBER TERM, A. D. 1893

ROBERT TURNER, *et al.*, *Appellants;*

vs.

ALFRED A. SAWYER, *Appellee*

## Affidavit of L. C Rockwell.

IN THE

# Supreme Court of the United States

NOVEMBER TERM, 1890.

ROBERT TURNER and
GEORGE E. MCCLELLAND,
*Appellants,*

*vs.*

ALFRED A. K. SAWYER,
*Appellee.*

## REPLY BRIEF BY APPELLEE.

IN MATTER TO HAVE THE APPEARANCE OF ONE JOSEPH S. ALLISON ENTERED IN THIS CAUSE

Allison in this court has no standing, as he is not party to the record, and no leave to make him, who was one of the defendants in the lower court, a party to the record should be entertained, for such practice would be irregular, and is not warranted by either reason or precedent.

Appellee has a motion herein to dismiss this appeal, because there was no summons and severance or equiva-

lent proceedings as to this same Allison in the lower court. Notice of that motion was duly served on appellants' attorney more than thirty days prior to filing said motion, and said attorney made his reply resisting that motion. Now he attempts to aid his argument by attempting to enter the appearance of Allison (who did not appeal), and STATING that said Allison does not intend to have the decree against him in this action reversed. That statement, underthe ruling of this court, is not a sufficient showing now. It would have not been sufficient had it have been made BEFORE the appeal was filed in this court, and certainly can not be sufficient when made a long time AFTER the appeal is filed here, and when it is not a part of the record, and after the irregularity has been taken advantage of and pointed out to appellants by appellee's motion to dismiss their appeal. This court has decided that such a showing as appellants are now making is not sufficient.

In the case of Masterson *vs.* Herndon (10 Wall., p. 416), the petition for the appeal was signed by counsel, was not sworn to and was thus:

> "Your petitioner *says* that his co-defendant, Mave-
> "rick, refuses to prosecute this appeal with her."

The court in that case said it does not "attach im-

> "portance to the technical mode of proceeding
> "called summons and severance," and would
> have held the appeal good "if it had appeared
> "in any way *by the record* that Maverick had
> "been notified in writing to appear, and that he
> "had failed to appear, or, if appearing, had re-
> "fused to join. But the mere allegation of his
> "refusal in the petition of appellant does not
> "prove this."

Now the case at bar is nearly parallel, in regard to the fact, to the case above cited. Allison (who now

says he does not want the decree as to him reviewed), as the record will show, was a party to the case in the lower court; he had the same attorney then who is now representing him in this matter, and all the facts were as well known to them before the appeal was prayed as it is now, and a summons and severance could easily have been had. The attorney now presents his statement and one from Allison, and neither of them sworn to, as substitutes for matters that should be of record, and such practice is a very lame way of curing a fatal irregularity in the record; and the appearance, if allowed, will not, in our opinion, rectify the record sufficiently to give this court jurisdiction, as it is a very well-settled principle that consent (such as Allison now makes) will not confer jurisdiction.

We respectfully submit that the cross-motion by appellees in this case is a confession of error and of the right to have the appeal dismissed. Our motion to dismiss did not come too late.

The precise question is settled in the case of The heirs of Nicholas Wilson *vs.* The Life and Fire Insurance Co., N. Y. (12 Peter, 140). The court in that case say, page 141 : "*The rule of this court, therefore, is that where there is a substantial defect in the appeal or writ of error the objection may be taken at any time before judgment, on the ground that the case is not legally before us, and that we have not jurisdiction to try it.*"

SIDNEY H. DENT,
*Solicitor for Appellee.*

EDWARD LANE,
*of Counsel for Appellee.*

# SUPREME COURT OF THE UNITED STATES.

ROBERT TURNER and GEORGE E. McCLELLAND, Impleaded with J. S. ALLISON, Appellants,
*vs.*
ALFRED A. K. SAWYER, Appellee.
} Stipulation.

In this cause it is hereby stipulated that it is a fact that on, to wit, the seventh day of January, A. D. 1889, Marcus Finch, acting as the agent of complainant, Alfred A. K. Sawyer, tendered to Robert Turner, one of the defendants, the sum of one hundred and six dollars and twenty-five cents, lawful money of the United States, at his, said Robert Turner's, office, in Idaho Springs, Clear Creek county, in the State and district of Colorado, and at the same time and place, as such agent aforesaid, tendered said Robert Turner, for his execution, a deed, sufficiently and properly made out, to and of an undivided five-eighths of said Wallace lode mentioned in the decree appealed from, and did then and there demand of said Robert Turner that he execute the same in accordance with said decree, and that he, the said Robert Turner, did then and there refuse to accept the money so tendered, and did also refuse to execute said deed; that afterwards, on the eighth day of January, 1889, said Marcus Finch made his affidavit of the facts aforesaid and attached the same to said deed and filed the same in the office of the clerk of the circuit court of the United States for the eighth circuit and district of Colorado, in said cause of Alfred A. K. Sawyer, complainant, *versus* Robert Turner, George E. McClelland, and J. S. Allison, defendants, and that the same was a part of the record of said cause when the same was appealed to this court.

This stipulation is made so as to save the trouble and expense of motion, etc., in this court to have such balance of said record returned and printed.

Dated April 14, 1890.

S. H. BALLARD,
*Sol'r for Appellee.*
S. C. ROCKWELL,
*Att'y for Appellants.*
EDWARD LANE,
*Of Counsel for Appellee.*

[Endorsed:] No. 1551. Supreme Court of the United States. 1889, Oct'r term. Robert Turner *et al.*, appellants, *vs.* Alfred A. K. Sawyer, appellee. Stipulation and addition to record. Filed April 18, 1890.

Office Supreme Court U.
FILED.
OCT 28 1893
JAMES H. McKENNEY,
CLERK.

# UNITED STATES

# SUPREME COURT.

OCTOBER TERM, A. D. 1893.

No. 70.

ROBERT TURNER, ET AL.,
Appellants,
vs.
ALFRED A. K. SAWYER,
Appellee.

## BRIEF AND ARGUMENT OF APPELLEE.

SIDNEY H. DENT,
Attorney for Appellee.
FREDERICK D. McKENNEY,
EDWARD LANE,
Of Counsel.

# UNITED STATES

# SUPREME COURT.

## OCTOBER TERM, A. D. 1893.

**No. 70.**

ROBERT TURNER, ET AL.,
APPELLANTS,
vs.
ALFRED A. K. SAWYER,
APPELLEE.

This is an appeal from a decree entered by the United States Circuit Court for the Circuit and District of Colorado, on the 20th day of December A. D. 1888, in favor of Appellee, in the case of Alfred A. K. Sawyer against Robert Turner, George E. McClelland and J. S. Allison, in a proceeding in Equity, in said Court, to have the defendants therein declared to hold an undivided five-eights interest in the Wallace Lode, Cascade Mining District, Clear Creek County, State of Colorado, as Trustee of, and to compel a conveyance of the same from them to Appellee.

## STATEMENT.

Appellants do not state this case clearly, but both Appellants and Appellee agree that on March 16th, 1883, the title to the Wallace Lode was owned of record in undivided parts as follows:

Amos Sawyer, one-half, or 4-8ths,
John S. Sanderson, - - - 3-8ths,
Alice E. Finch, - - - - 1-8th,

and that "it so remained from March 16th, 1883, to the 12th day of January, 1885, when Amos Sawyer assumed to convey one-half thereof to Alfred A. K. Sawyer." (Appellant's Brief, p. 7).

On August 14th, 1883, one John F. Teal filed a lien notice for labor upon said Wallace Lode, claiming a lien for the sum of one hundred and forty-eight dollars and ten cents, in the Recorder's office of Clear Creek County, Colorado; and one Charles Christianson, filed therein a similar notice for labor thereon, claiming a lien for the sum of two hundred and twenty-seven dollars and ninety-five cents. (Printed Rec. p. 32 and p. 41).

On the 12th day of January, 1884, the said John F. Teal instituted a suit in the County Court of Clear Creek County, Colorado, to enforce his said lien against said Lode, and made defendants in said suit, John S. Sanderson, Marcus Finch, P. T. Smith, and —— Sawyer as the owners thereof. There was no service upon Sawyer, no appearance entered for him and he was not in Court.

Such proceedings were had in the Teal lien suit, that on the 3rd day of March, 1885, Appellant Turner received a Sheriff's deed purporting to convey to him the whole

Wallace Lode. (Printed Rec. p. p. 33 to 40 inc., and p. 47). Charles Christianson instituted a suit against the same defendants as in the Teal suit in the same court, which was pending at the same time as the Teal suit, to enforce his lien against the same property. (Printed Rec. p p. 41–42).

On April 24th, 1885, Appellant Turner published a forfeiture notice against Appellee for a portion of the expenditure for the annual labor of 1884, but no forfeiture notice was published against Alice E. Finch, who owned an undivided one-eight of said Lode from January 8th, 1883, to November 3rd, 1886. (Printed Rec. p. 49). Nor against Amos Sawyer, who owned one-half of said Lode during the year of 1884.

Appellant Turner declined a profer made January 18th, 1885, to pay five-eights of the one hundred dollars for the annual labor of 1884, on behalf of Alice E. Finch and Amos Sawyer, on the ground, that "the records only show Sanderson and Sawyer as having any remaining interest in the Wallace." (Letter, R. Turner, January 18th, 1885. Printed Rec. p. 71). (Letter, M. Finch, January 18th, 1885, Printed Rec. p. p. 59 and 67–70).

On October 27th, 1885, Appellant Turner filed in the office of the Clerk and Recorder of Clear Creek County, Colorado, his affidavit that Alfred A. K. Sawyer, had wholly failed to comply with the demands contained in said forfeiture notice. (Printed Rec. p. p. 49–50).

Basing his right of ownership to the whole of said Wallace Lode upon the proceedings in the Teal lien suit,

and the notice of forfeiture published against Alfred A. K. Sawyer, Appellant Turner instituted proceedings in the United States Land office at Central City, Colorado, for the purpose of procuring in his own name alone a patent to said Wallace Lode, and such false and fraudulent representations as to ownership, were made by Appellant Turner, that on the 20th day of April, 1886 a Receiver's Receipt was issued to said Appellant by the Receiver of said United States Land Office, for said Wallace Lode, and upon the same day Appellant Turner conveyed an undivided one-quarter interest in and to said Lode to George E. McClelland by deed duly recorded December 6th, 1886; and another undivided one-quarter to J. S. Allison by deed duly recorded May 19th, 1886.

On the 17th, day of March 1887, Appellee filed his bill in equity in the United States Circuit Court, charging the fraudulent acts and representations of Appellant Turner in so procuring the patent in his own name alone to said Wallace Lode, (Printed Rec. p. p. 10–11), and praying that the title to an undivided five-eights thereof be decreed to belong to this Appellee, and that Appellant convey the same to Appellee.

Upon the trial of this cause in the court below, it was found that at the time Appellant Turner applied for a patent to said Wallace Lode and received the Receiver's Receipt therefor, Appellant was not the legal owner of the possessory title to the undivided five-eights of said Lode, the subject matter of this suit, and it was decreed that Appellant convey the same to Appellee.

From this decree an appeal was prayed to this court

by Turner and McClelland. Allison has caused his appearance to be entered in this court, and the statement to be made and filed herein that he does not wish the decree reviewed as to him.

## BRIEF.

The statement filed by Teal and Christianson, as the basis for their liens are not such statements as are provided for in Sec. 2140 of the General Statutes of Colorado, and for the want of the statutory statement the County Court of Clear Creek County, Colorado, did not acquire jurisdiction over the subject matter of the suits, and for the want of proper parties to the suits and service of process on the owners of the property sought to be charged with the lien, as provided in Sec. 2161, General Statutes of Colorado, said Court had no jurisdiction over the person of the owner of the property, and its judgment and decree are *coram non judice,* and no title passed under the sale to foreclose said liens against the said Wallace Lode, and Appellant Turner had no right, title or interest in said Lode when he applied for a patent thereto, and represented himself as the sole owner thereof.

General Statutes, Colo., Sec. 2140.
Same, Sec. 2161.
Cannon & Dounce v. Williams, 14 Colo., 21.
Decker v. Myles, 4 Colo., 556.
San Juan H. L. M. Co. v. Finch, 6 Colo., 214.
Wells v. Francis, 7 Colo., 414.

"In summary proceedings, where a court exercises an

extraordinary power, under a special statute that prescribes its course, that course must be strictly pursued, and jurisdictional facts must appear on record."

Thatcher v. Powell, 6 Wheat., 119.

"Sale ordered by court must be confirmed before purchaser can have legal title."

Williamson v. Berry, 8 How., 494.

The jurisdiction of the County Court of Clear Creek County, Colorado, was not invoked with respect to a claim of lien upon the Wallace Lode, as the property of John S. Sanderson, P. T. Smith and Marcus Finch. A claim of lien by Teal, or Christianson, upon only the interests of John S. Sanderson, P. T. Smith and Marcus Finch in and to said Wallace Lode, was not a matter presented by any petition before the court. "It was not therefore, and could not be a subject of order or decree. Such a lien is void, a decree of sale based thereon would also be void."

Bassick Mining Co. v. Scholfield, 10 Colo., 46.

"The action of the court, notice of sale and the sale itself, must be of and concerning the same subject matter, the same land in the petition; if there is a disagreement no title will pass."

Union Iron Works v. Bassick M. Co., 10 Colo., 43.

"The adjudication by a court where jurisdiction is not obtained, is void as to the property which its judgment assumes to effect, and its owner may repudiate their action, defy their powers, and avail himself of his objection at any stage of their proceedings under the judgment or

decree, as well collaterly as otherwise. In such case the proceeding is not due process of law, nor by the law of the land and all persons interfering with individual property under such assumed authority, render themselves liable as tresspassers."

Potter-Dwarris on Constitutions and Statutes, p. 479.

Rorer's Judicial Sales, Secs. 463–464.

"Court must follow the statute giving it jurisdiction or proceedings will be void."

Boswell v. Ottis, 9 How., 336.

"The jurisdiction of any court may be inquired into in every other court where the proceedings of the former are relied on, and brought before the latter by one claiming under them."

Elliot v. Peirsol, 1 Pet., 329.
Thompson v. Tolmie, 2 Pet., 157.
Hickey v. Stewart, 3 How., 750.
Williamson v. Berry, 8 How., 495.
Nations v. Johnson, 24 How., 195.

It is not contemplated by Section 2324, R. S. U. S., that one co-owner is to adverse another who has applied for a patent in order to protect his property rights in a Mining Claim. In Colorado such property is held under the law to be real estate, can be sold under execution, descends to the heirs, and its ownership is governed by the laws and equities governing the ownership of real property.

Gen'l Statutes Colo., Sec. 225, p. 177.

There is no Act of Congress authorizing the issuance of a patent to a Mining Claim to a person who has not first made a proper location thereof, or connected himself by some legal conveyance with such a location made by another.

There is no warrant in law for granting the relief prayed for in the petitions filed by Teal and Christianson, or that granted by the decree entered by the County Court of Clear Creek County, Colorado, in their suits to foreclose their liens.

Gen'l Statutes Colo., Secs. 2155, 2156, p. 668.

Same, Sec. 1860, p. 600.

Same, (Code Civil Procedure), Sec. 234, p. 73.

Appellant Turner acquired no interest in and to said Wallace Lode, by the publication of his forfeiture notice against Appellee (A. A. K. Sawyer), on account of the annual labor for the year 1884.

Because:—

*a.* Neither Appellant or Appellee were co-owners in said Lode during the year 1884, within the meaning of Sec. 2324, R. S. U. S.

*b.* If Appellant Turner came within the purview of the Statute as a co-owner during the year 1884, the profer to pay five-eights of the one hundred dollars, made on behalf of Alice E. Finch, and Amos Sawyer, and declined by Appellant Turner, is a bar to any right he might have secured under the Statute. (Printed Rec. p. 59).

*c.* At the time Appellant Turner was publishing his forfeiture notice against Appellee, a claim for lien for the annual labor for 1884, was being made against J. S. San-

derson, Amos Sawyer and Alice E. Finch, by the person who did the work. (Printed Rec. p. 48).

*d.* Forfeitures must be enforced by Courts of Law. A Statute which provides for the transfer of one person's property to another, without the intervention of a court, is an infringement upon the Constitutional guarantee: "That no person shall be deprived of his life, liberty or property without due process of law."

Const. U. S. Amendment V.

Const. Colo., Art. 2, Sec. 25.

"Where relief is sought, on ground that patent was issued to one, while right was in another, decree should provide for transfer of title to the one equitably entitled."

Silver v. Ladd, 7 Wall., 219.

"Where party has been deprived of his right by fraud, accident or mistake, and has no remedy at law, equity will grant relief."

Metcalf v. Williams, 104 U. S., 93.

"The issue of a patent of public land to a person who is not equitably entitled to it, does not preclude the owner of the equitable title from enforcing it in a court of equity against claimants under the patent."

Monroe Cattle Co. v. Becker, 147 U. S., p. 47.

Appellant Turner acquired no interest in and to the undivided five-eights of said Wallace Lode decreed to Appellee, under the Teal lien foreclosure suit, as the owners thereof, Alice E. Finch and Amos Sawyer, were not parties to the proceedings, and their interest therein could not be sold under said decree.

Bordors v. Murphy, 78 Ill., 86
Mulvey v. Carpenter, 78 Ill., 582.
Johnson v. Baker, 38 Ill., 98.

Appellant Turner falsely and fraudulently represented to the Government in his application for a patent to said Wallace Lode, that he was the sole owner thereof, and cannot set up as a defense in this cause, that Appellee is barred from recovering his interest in said Lode, by reason of his failure to adverse Appellant in his fraudulent proceedings.

"After the United States has parted with its title and the individual has become vested with it, the equities subject to which he holds it, may be enforced but not before."

Meader v. Norton, 11 Wall., 442.
Marquez v. Frisbie, 101 U. S., 475, citing Johnson v. Towsley, 13 How., 72 and Shapley v. Cowan, 91 U. S., 340.

The object of this suit is to compel Turner to make conveyance to Appellee (Sawyer) of the legal title to an undivided five-eights of the Wallace Lode acquired by Turner from the Government and to which Sawyer is better entitled, being the holder of the possessory title.

Lindsay, et al v. Hawes, 2 Black, 554.
Cunningham v. Ashley, 14 How., 377.
Garland v. Winn, 20 How., 8.
Silver v. Ladd, 7 Wall., 219.
Smelting Co. v. Kemp, 104 U. S., 636.

For the convenience of the Court we print Sections 2140, 2152, 2155, 2156 and 2161, General Statutes of Colorado, under the provisions of which the Teal and Christianson lien statement were filed, and the suits to enforce the same were prosecuted.

2140—

"Sec. 23 [10]. Any party claiming a lien shall file in the office of the Clerk and Recorder of the County wherein said land is situated, a statement containing:

First—A notice of intention to hold and claim a lien.

Second—A description of the property to be charged therewith.

Third—An abstract of indebtedness showing the whole amount of debt, the whole amount of credit, and the balance due, or to become due, to the claimant, which abstract of indebtedness shall be verified by the claimant or by some other person in his behalf to the best knowledge, information and belief of the affiant. In case two or more persons claim an interest in the same lien and claim, it shall be sufficient for one of such persons or some other person in their behalf to verify such abstract of indebtedness, and the signature of any such affiant to any such verification shall be a sufficient signing of such statement.

2152—Actions—Consolidated, &c.

Sec. 35. [22] Any number of persons claiming liens and not contesting the claims of each other may join as plaintiffs in the same action, and when separate actions are commenced the court may consolidate them upon motion of any party or parties in interest, or upon its own motion. Upon such procedure for

consolidation, one case shall be selected with which the other cases shall be incorporated, and all the parties to such other cases shall be made parties defendant in said case so selected. All persons having claims for liens, the statements of which shall have been filed as aforesaid, shall be made parties to the action. Those claiming liens or [who] fail or refuse to become parties plaintiff, or for any reason shall not have been made such parties, shall be made parties defendant. Any party claiming a lien not made a party to such action may, at any time before the trial of the action or before the final hearing of the case by the court, be allowed to intervene by motion, upon cause shown, and may be made a party defendant on the order of the court. The court shall fix the time for such intervenor to plead or otherwise proceed. The pleadings or other proceedings of such intervenor thus made a party shall be the same as though he had been an original party. Any such defendant, by way of answer, shall set forth by cross-complaint his claim and lien. Likewise such defendant may set forth in said answer defensive matter to any claim or lien of any plaintiff or co-defendant, or otherwise deny such claim or lien. Any such defendant may, by his answer, set up that there are other persons who claim liens upon the property described, naming them, and asking that they be summoned to appear and maintain the same. Thereupon an amended summons shall issue in like form as the original, but so modified as to make parties defendant of the persons so named in the answer in addition to the other defendants. Said last named summons shall be served upon such new defendants as in other cases. The owner of the property to which such lien shall have attached shall be made party to the action.

2155. Court may hear or refer—How judgment rendered].

Sec. 38. [25]. The court my [may] proceed to hear and determine said liens and claims, or may refer the same to a referee to ascertain and report upon said liens and claims, and the amounts justly due thereon. Judgment shall be rendered according to the rights of the parties. The various rights of all the lien claimants, and other parties in any such action shall be determined and incorporated in one judgment or decree. Each party who shall establish his claim under this act shall have a judgment against the party personally liable to him for the full amount of his claim so established, and shall have a lien established and determined in said decree upon the property to which his lien shall have attached to the extent hereinbefore stated.

2156. Sale of property—How made—Redemption—Proceeds appportioned—Surplus transcript of judgment filed].

Sec. 39. [26]. The court shall cause said property to be sold in satisfaction of said lien and costs of suit, *as in the case of foreclosure of mortgages,* and any party in whose favor a judgment for a lien may have been rendered may cause the property to be sold within the time and in the manner provided for sales on executions issued out of any court of record, and the owner and creditors shall have a right of redemption, as is provided in the case of sales on execution. And if the proceeds of such sale, after the payment of costs, shall not be sufficient to satisfy the whole amount of such liens included in the decree of sale, then such proceeds shall be apportioned according to the rights of the several parties. In case the pro-

ceeds of sale amount to more than the sum of said liens and all costs, then the remainder shall be paid over to the owner of said property, and each party whose claim is not satisfied in the manner hereinbefore provided shall have execution for the balance unsatisfied against the party personally liable, as aforesaid, to said party so obtaining executions. In the first instance, without a previous sale of said property to which such liens shall have attached, an execution may issue in behalf of any such lien claimed for the full amount of his claim against the party personally liable. A transcript of the docket of said judgment and decree may be filed with the recorder of the county where such property is situated: said judgment and decree shall become a lien upon the real property of each party so personally liable in favor of any such lien claimant holding any such judgment against any such party so personally liable.

2161—

Sec. 44. [31]. No remedy given by this act shall be construed as preventing any person from enforcing any other remedy which he otherwise would have had, except as otherwise herein provided. The practice under this act shall be in accordance with the Code of civil procedure of the State of Colorado, *In case of two or more owners, contractors or subcontractors interested in the same contract, the rule of procedure shall be the same as in the case of one such.*

## ARGUMENT.

It will be seen by the record in this cause that the decree entered herein should be affirmed.

Because:

I.

The proceedings had in the County Court of Clear County Colorado, in the suit instituted by John F. Teal to foreclose his lien against said Wallace Lode, and the owners thereof were null and void for the following reasons:

*a.* The court had no jurisdiction of the subject matter of the Teal lien suit for the want of the Statutory statement.

Gen'l Statutes Colo., Sec. 2140.

Cannon & Dounce v. Williams, 14 Colo., 21.

*b.* The court had no jurisdiction over the person of the owners of the property sought to be charged with the lien.

Gen'l Statutes Colo., Sec. 2161.

*c.* The proceedings to foreclose said lien, and the sale of the property in satisfaction thereof, were not in accordance with the statutes of the State of Colorado, in such cases made and provided.

Gen'l Statutes Colo., Secs. 2140, 2155, 2156 and 2161.

II.

Appellant Turner acquired no title to an undivided five-eighths of said lode by the publication of the forfeiture notice against appellee for the annual labor for the year 1884, because

*a.* Neither appellant Turner or appellee were owners of any interest in said lode during the year 1884, and

do not come within the provisions of section 2324 R. S. U. S. in relation to co-owners.

Sec. 2324 R. S. U. S.

*b.* A profer to pay the proportionate amount of five-eights of the one hundred dollars expended for the labor of 1884, was made by the representative of Alice E. Finch and Amos Sawyer, who owned that interest in that year and the profer was declined by appellant Turner.

Printed Rec. pages 59, 70, 71.

*c.* Forfeitures are odious, and must be enforced by courts of law. A statute which provides for the transfer of one persons property to another upon the publication of a notice, and the making of an affidavit, without the intervention of a court is an infringment upon the constitutional right guaranteed to all persons that they shall not be deprived of their "life, liberty, or property, without due process of law."

Constitution U. S. Amendment V.

III.

That the issuance of a patent by the Land Department to one not legally entitled thereto, does not preclude the legal owner from obtaining proper redress in a Court of Equity—after such patent has issued, because:

*a.* After a proper location of a mining claim has been made, the Government holds the legal title to the property in trust for the locator, his heirs or assigns, and if through fraud or mistake the same is passed by patent to one who is not an heir of, or cannot connect himself by a chain of legal conveyance with the original locator, a

Court of Equity will not permit him to profit by his intended or construction fraud, but will hold him charged with the trust estate, and compel him to convey the same to its proper owner.

As to the first proposition:

When the labor, for which Teal filed his lien statements was done, the Wallace Lode was owned of record in undivided parts, by Amos Sawyer, one-half, John S. Sanderson, three-eights, Alice E. Finch, one-eight. The title to the whole of said lode being vested in said parties, and was so owned when the suit to enforce the same was instituted. At this time, Charles Christianson, also had a lien statement of record.

We quote from appellants brief, page 2:

"Defendants contend that on the 16th day of March, 1883, John Sanderson and Amos Sawyer were the owners of an undivided three-fourths of said lode, and while such owners, one John F. Teal, on the 13th of August, 1883, filed a lien upon their interest for annual labor done upon the lode at their request for that year (print 4), and on the 6th day of March, 1884, through proper legal proceedings in the County Court of Clear Creek county, established his lien, and afterwards and on the 2nd day of June, 1884, proceeded to sell the interest of John Sanderson in said Wallace Lode to pay the amount of the decree, at which sale A. K. White became the purchaser, and took his certificate of purchase from the sheriff and sold and assigned it to Turner, who obtained a sheriff's deed upon it on the 3d of March, 1885, (print 45). Turner did the annual labor on the claim for the year 1884, before he obtained his sheriff's deed, after which he published a forfeiture notice under Sec. 2324,

R. S. U. S., and directed the same to A. K. Sawyer, dating such notice April 24th, 1885, (print 10). And afterwards and about November 1st, 1885, (print 11), commenced proceedings in U. S. Land Office for a patent for said Wallace Lode in his own name, which ended by entry of that lode in U. S. Land Office on April 20th, 1885, and which entry was subsequently followed by patent." There is nothing in this record to warrant the statement that the labor performed on said lode by Teal in 1883, was the statutory annual labor for that year.

The statements of lien filed by Teal and Christianson, and upon which their lien suits are based, are not such statements as are contemplated by Sec. 2140, General Statutes of Colorado, which provides: That the party claiming a lien shall file in the office of the Clerk and Recorder of the County wherein said land is situated, a statement containing:

First—A notice of intention to hold and claim a lien.

Second—A discription of the property to be charged therewith.

Third—An abstract of indebtedness showing the whole amount of debt, the whole amount of credit and the balance due, or to become due, to the claimant.

Printed Rec pages 32, 33 and 41.

"Under this statute the statement of a lien which shows merely the balance claimed to be due, with no attempt to show an abstract of indebtedness, giving debits or credits, is insufficient."

(Cannon and Donned v. Williams, 14 Colo., 21.)

"Such statements are indispensable, without them no lien is created and no court can acquire any jurisdiction to entertain any proceedings under it."

Hoyt's Mechanics' Liens, page 136.
Conkrite v. Thomson, 1 E. D. S., 661.
Quimby v. Sloan, 2 E. D. S., 594, Note 607.

On the 12th day of January, 1884, the said John F Teal filed his petition in the County Court of Clear Creek County, to foreclose his lien against said lode, and made as defendants in said suit the said John S. Sanderson, P. T. Smith, Marcus Finch and —— Sawyer, as owners thereof.

(Printed Rec. page 33.)

In his petition Teal asks judgment against said defendants, Sanderson, Smith, Sawyer and Marcus Finch:

First—For the amount due him.

Second—That said plaintiff (Teal) be adjudged and decreed to have a lien upon said Wallace Lode, for the amount of such judgment and costs.

Third—That said property be decreed to be sold to satisfy said judgment and costs, and accruing costs, and that said sale conform to *sales upon execution issued from courts of record* as nearly as may be.

That in case of such sale, and said property does not sell for sufficient to pay said judgment and costs and accruing costs, that execution may be issued against the real and personal property of defendants, as in cases of judgment for money demand only.

(Printed Rec. page 34.)

The summons shows Sawyer not served with process, and the record does not show any appearance in said court as to him, and that Alice E. Finch, one of the owners of said lode was not made a party to said suit.

(Printed Rec. page 35.)

This, in substance, is the petition in the suit of said Teal to foreclose his lien against said lode.

On the sixth day of March, 1884, it was ordered by said court "that said mining property is subject to said lien, and is hereby ordered to be sold by the sheriff of said county for the payment of said judgment and costs, and that a *venditioni exponas* be issued by the Clerk of this court for the sale of said property described to said sheriff, and *that such sale conform to sales upon execution,* issued from this court as nearly as may be."

(Printed Rec. page 37.)

On the ninth day of May, 1884, an execution issued out of the office of the Clerk of the County Court of said Clear Creek County, upon said decree in favor of said Teal and against the lands, tenements, goods and chattels of the said John S. Sanderson, P. T. Smith and Marcus Finch, and was levied the same day upon the Wallace Lode mining claim, lying and being in Cascade Mining District, Clear Creek County, State of Colorado.

In passing upon this matter in the Circuit Court it was said by Hallett, Judge, before whom this case was tried, "that the suit which Teal brought was against Sanderson, P. T. Smith, Marcus Finch, who perhaps was the husband of Alice E. Finch, and Amos Sawyer; but

Amos Sawyer was not served with process, and did not appear in the action, and the judgment was obtained against Sanderson, Smith and Marcus Finch. The only person of the owners against whom the judgment ran, was John S. Sanderson, the owner of three-eights. Upon this it is impossible to say that Amos Sawyer and Alice E. Finch were bound by these proceedings.

Section 2161 provides the practice under this act *shall be* in accordance with the Code of Civil Procedure of the State of Colorado, and that "in case of two or "more owners, contractors, or sub-contractors interested "in the same contract, the rule of procedure shall be the "same as in case of one such."

Section 2155, Gen'l Statutes of Colorado, provides. "that the court may proceed to hear and determine said liens and claims, or may refer the same to a referee to ascertain and report upon said liens and claims, and the amount justly due thereon. Judgments *shall* be rendered according to the rights of the parties. *The various rights of all the lien claimants, and other parties* in any such action *shall* be determined and incorporated into *one judgment or decree*." * * * Were the Teal and Christianson suits conducted in conformity with the provisions of the General Statutes of Colorado. Was the County Court of Clear Creek County in a position in these cases to act under this section and render a judgment or decree according to the rights of all the parties? Under such a condition could it incorporate the rights of all the lien claimants into one judgment or decree, and respect the rights, under the law, of the different owners of the Wallace Lode, the same as if there had been but

*one owner*—and did it do so? Most certainly, *the owner* within the meaning of Section 2161, was not before the court. Sanderson owned an undivided three-eights of the property sought to be charged with the liens. He did not own it all. Amos Sawyer and Alice E. Finch owning an undivided five-eights, were not before the court.

"The owner of the property to which such lien shall "have attached, shall be made party of the action."

Gen'l Statutes Colo., Sec. 2152.

Section 2156, General Statutes, provides, "the court shall cause the property to be sold in satisfaction of said lien and costs of suit as in the case of *foreclosure of mortgages.*"

There is no provision in law for the sale under execution of the property against which the lien attaches, until after a sale has been made under the decree "as in the foreclosure of mortgages," conformation made and judgment entered by the court for residue, and such judgment cannot be docketed until after a report by the sheriff showing a deficit.

When measured by the statutory provisions no sale has yet been made of said Wallace Lode, or of any interest therein of any defendant in the Teal-Chriatianson lien suits, as no sale of said property or any part thereof has ever been made under the proceedings in either case, under a decree, as in the foreclosure of mortgages.

Rorer's Judicial Sales, Sections 2 and 12.

The jurisdiction of the court was not invoked with respect to a claim of lien upon any other property than

that mentioned in the petition, namely the Wallace Lode, as the property of the defendants, in Teal's petition to foreclose, against John S. Sanderson, P. T. Smith, Amos Sawyer and Marcus Finch. But Sawyer was not served. He was not before the court, and it was powerless to enter up a valid decree against said lode as the property of Sanderson, Smith and Marcus Finch, upon a petition asking a lien and decree of sale of the whole property, as that of Sanderson, Smith, *Sawyer* and Marcus Finch. "A claim of lien by Teal upon only the interests of John S. Sanderson, P. T. Smith and Marcus Finch, in and to said Wallace Lode was not a matter presented by any petition before the court."

The property was not, therefore, and could not be a subject of order or decree. Such a lien is void, a decree of sale based thereon would also be void.

Bassick Mining Co. v. Schoolfield, 10 Colo., 46.

"The action of the court, notice of sale and the sale itself, must be of and concerning the same subject matter and same land in the petition; if there be a disagreement no title will pass."

Union Iron Works v. Bassick M. Co., 10 Colo., 46.

We now pass to the second proposition and consider the effect of the publication of the forfeiture notice, by Appellant Turner, against Appellee for the annual labor of 1884, upon undivided interests in said lode owned by Amos Sawyer, and Alice E. Finch during that year.

In passing upon this point in the court below it was said by Hallett, J.

"We come now to consider the effect of certain work done by a man named Washington Johnson, in the year 1884, on this mine as annual work upon the claim. It was done by Turner, at his instance, and he afterwards published a notice, and sought to establish a forfeiture, against the other owners for not paying their proportion of the expenditures.

At that time, in the year 1884, Turner had acquired no title whatever to the property. August 25th 1884, he received an assignment from White of a certificate of purchase under the Teal judgment, so that he then held that certificate, and he had also obtained an assignment of certain other judgments which had been recovered by William Hunter, against Sanderson and Smith, two of them. These judgments were assigned to him August 27th 1884, and the sales were made under those judgments January 12th 1885, and the certificates of sale were issued to Turner, so that he became the purchaser under these judgments in January 1885, but none of these things make him an owner of the property in the year 1884.

The Statute in respect to annual work, section 2324 of the Revised Statutes, is that the work may be done by any one of the owners of the claim, and upon failure of any one of several co-owners to contribute his proportion of the expenditure required, the co-owners who perform the work shall at the expiration of the year, give such delinquent co-owners personal notice in writing, or notice by publication in a newspaper published nearest the claim, at least once week &c., and then if the delinquent fails to contribute his proportion of the expenditure, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

There seems to be no doubt, that the owner who

seeks to acquire title under this section, in virtue of having done annual work upon the claim, must be in the position of a co-tenant; he must be an owner of some interest in the claim; but during the year 1884 Turner was not in that position. He held a certificate of purchase during the latter part of that year under the Teal decree, and he was a judgment creditor in virtue of certain assignments of judgments to him, but he was not a co-owner, within the meaning of this statute, and therefore his attempts to acquire the interests of the others, under the Statute which has been referred to, was entirely unavailing. It is said that these proceedings in that behalf were void. It is perhaps true that he might protect his own interest in the property [whatever it was], by doing the annual work there, but he was in no position to proceed adversely to others associated with him in the property.

The other judgments to which reference has been made, which were obtained by William Hunter, and by Christianson against Sanderson, Smith and Marcus Finch, were ineffectual to confer upon the defendant Turner any other title than that which he had already acquired from Sanderson, because they were not against the true owners of the property at that time."

Appellants say, (Brief p. 7.—That "on March 16th" 1883, John Clark and William Hunter conveyed three-fourths of said Lode to Amos Sawyer and John Sanderson (Ex. I. Printed Rec. p. 66)

The title then stood:

Amos Sawyer four-eights, and Sanderson three-eights—seven-eights.

Alice E. Finch, one-eight.

It so remained from March 16th 1883, to the 12th

day of January 1885, when Amos Sawyer assumed to convey one-half of said Wallace Lode to A. A. K. Sawyer.

(Ex. L. Printed Rec. p. 67.)

Counsel for Appellants properly states the ownership of the title to said Lode during the year 1884, and show conclusively that neither Appellant Turner, nor Appellee Sawyer were co-owners in said property during the year 1884.

Title to land sold under Execution remains in the judgment debtor until the deed is Executed.

Hayes, et al v. N. Y. G. M. Co. of Colo., 2 Colo., 273.

Laffey v. Chapman, 9 Colo., 305.

Manning v. Shehlow, 11 Colo., 457.

Further, appellant could secure no title to said undivided five-eights of said lode by the publication of a forfeiture notice.

Forfeitures are odious and must be enforced by courts of law. The provisions of a statute which provides for the transfer of one persons property to another, by the publication of a notice and the making and filing of an affidavit, besides opening the door to the perpetration of the grossest frauds, by the unscrupulous, are an infringement upon the constitutional right which guarantees that no person shall be deprived of his "life, liberty or property without due process of law."

We believe it is competent for Congress to provide by statute the conditions as between the locator and the Government, under which mining claims shall be located and held. That it can prescribe the conditions under

which the location will revert to the Government. Under the present statute the Government requires one hundred dollars worth of work to be done upon a claim annually, and a failure to comply with this requirement upon the part of the locator, is a failure to comply with the conditions under which the estate is held, and it reverts to the Government. But we do not believe that Congress can legislate as to the condition or terms upon which undivided interests in a mining claim are held by the various owners thereof. So long as the annual work is performed the location is segregated from the public domain. It is individual and private property. The interest of each locator therein is subject to sale under execution. Upon the death of a locator his interest therein would descend to his heirs, and we maintain that any differences as to expenditures made by two or more locators upon a mining claim owned by them, cannot be adjusted by a legislative enactment, which provides that the interest of one in the location may be taken and will become the property of another upon the simple process of the publication of a notice, and the making and filing of an affidavit by the interested party that the terms of the notice have not been complied with. The sacred rights guaranteed to every person under the Constitution that he shall not be deprived of "his life, liberty or property without due process of law," receives no judicial consideration by such a course and such proceedings we believe to be clearly unconstitutional and void.

In this very case we have an illustration of the gross fraud to which such a provision opens wide the door.

Appellant Turner claimed as a co-owner to have performed the labor upon the Wallace Lode for the year 1884. In looking about to see from whom he should collect a portion of the money, he wrote to the representative of Amos Sawyer and Alice E. Finch under date of January 15th, 1885, (Printed Rec. p. p. 59–69), in relation to collecting a part of this one hundred dollars from Sanderson and Sawyer, and received in reply a letter dated January 18th, 1885, in which the title of Amos Sawyer and Alice E. Finch is disclosed and a profer to pay their portion of five-eights of said sum of one hundred dollars is made. (Printed Rec. p. p. 69–70). What is said, is plainly understood by appellant, as is shown by his letter in reply dated January 18th, 1885, (Printed Rec. p. p. 70–71), in which he said, "I note what you say in regard to the $100, but the records only show Sanderson and Sawyer as having any remaining interest in the Wallace." Appellant then attempted to acquire the interest Amos Sawyer held in the Lode in the year 1884, under the provisions of Sec. 2324, R. S. U. S., by the publication of the forfeiture notice against Alfred A. K. Sawyer.

This was perhaps necessary, otherwise when it came to making the requisite affidavit, it might have been difficult under the facts for Appellant Turner to have sworn away from Amos Sawyer his interest in said Lode and placed the same under the ownership of Appellant.

Section 2325, U. S. R. S., provides, "A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, associa-

tion or corporation *authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes,* who has, or have complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, &c., * * *

If no adverse claim shall have been filed with the register and receiver of the proper land office at the expiration of sixty days, of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, *except it be shown that the applicant has failed to comply with the terms of this chapter.*"

We think it has been conclusively shown that Appellant Turner has not complied with the terms of the statute in respect to the location of Mining claims and the procuring of patents thereto. If he was not the locator, or could not connect himself by a chain of legal conveyance with John Clark, the original locator, then as to all that undivided part of the Lode to which he had no title, he does not come within the provisions of the statute. As to that undivided portion, he is neither a "locator, heir or assign," and is not entitled to a patent thereto. He has failed to comply with the terms of the law under which patents to mining claims are issued, and was not entitled to the legal title to said undivided five-eighths, when he made his application for a patent thereto, and represented himself as the sole and only

owner thereof. Hence the statute provides no protection for his false and fraudulent acts, under the plea that appellee failed to adverse him in his illegal and fraudulent proceedings.

The bill charges that appellant Turner in fraud of the rights of appellee and his grantors and fraudulently as to the United States instituted proceedings in the United States Land Office at Central City, Colorado, for the purpose of procuring the legal title to said Wallace Lode by patent to himself alone (Printed Rec., p. 11.), and that upon such false and fraudulent representations as to his ownership of said lode, appellant procured the Receiver's receipt therefor. The legal title held by the Government to a mining claim, after a location is made, is not adverse to the possessory title thereto in the general sense of that term.

After the location is made and that particular piece of land is segregated from the public domain, the legal title thereto is held by the Government in trust for the owners, under the law of the possessory title. It is not such a superior title, that its acquisition by anyone would defeat the possessory title. If patent is issued to a stranger, or one who cannot connect himself with the locator as an heir, or by a legal chain of title, and thus come within the statute which authorizes the issuance of the patent, it conveys no title to the patentee. At best he can only hold subject to the rights of the legal owner of the possessory title. The possessory title gives the equitable right to the legal title, and is in support thereof rather than adverse thereto.

The record in this cause shows that appellant at the time he applied for patent, and at the time he received the Receiver's receipt, did not own the possessory title to the undivided five-eighths of said lode in controversy.

When suit is instituted to compel appellant Turner to convey the legal title so fraudulently obtained to its rightful owner. Appellant comes into a Court of Equity and virtually says: "It is immaterial whether or not I owned the possessory title to this undivided five-eighths of the Wallace Lode, when I applied for the patent thereof. I now have the legal title thereto, I obtained it, it is true, by false and fraudulent misrepresentations made to the Land Department, you failed to adverse me in my unlawful proceedings, and now I ask a Court of Equity to reverse its decree giving you your property, solely for this reason that I may enjoy the fruits of my illegal acts."

It was said by Hallett, Judge, in the court below in this case:

"This brings us to the question which was considered upon demurrer to the bill in this case, as to the effect of proceedings in the Land Office by Turner in his own name, to acquire title in himself from the Government of the United States, ignoring his co-tenants. I see no reason to change the opinion, which was then expressed, that a co-tenant, proceeding in that manner, shall be held to have taken title for all who may be actually interested in the property. The case seems to be within the general principal that one tenant in common shall not get in another title, to the prejudice of those who are associated with him in the ownership.

The circumstance that the title is got from the Government, it is believed cannot affect that principal. But several tenants in common proceeding to get a patent from the Government, shall be taken to proceed in the honest purpose to give to all who may be interested in the property their just interests. The failure of one or more co-tenants to appear and adverse him, or them in the Land Office, shall not prejudice their right to their interest in the property.

Upon this it appears that the complainant is entitled to the relief for which he asks."

Appellant Turner acquired no title to an undivided five-eights interest in said Lode under the proceedings in the County Court of Clear Creek County, Colorado, to foreclose the Teal lien, nor under the publication of the forfeiture notice against Appellee for the annual labor for the year 1884. Does the fact that Appellant holds the bare legal title to land, under a patent from the Government procured by his fraudulent representations of ownership under a location, place him beyond the jurisdiction of a Court of Equity? Can he retain for his own use and benefit the property of others by setting up his own fraudulent acts as a bar to the recovery of the property by its rightful owner?

The record in this case shows, John Clark to have been the locator of the Wallace Lode, (print 64) that the same was located subsequent to May 10, 1872. Under Section 2325 then John Clark or his heirs, or assigns, are the persons legally entitled to the patent.

Section 2322, R. S. U. S., provides: "The locators of

all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, or lode, or ledge, situate on the public domain; *their heirs and assigns*, where no adverse claim exists on the 10th day of May, 1872, so long as they comply with the laws of the United States, and with State, Territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations and of all veins, lodes and ledges, etc. * * *"

We know of no act of congress authorizing the issuance of a patent to a mining claim to a person who has not first made a location thereof, or connected himself by some legal conveyance with a claim previously located by another. There are no provisions made by the acts of congress whereby an entire stranger to the title can make application for a patent to any certain tract of land as a mining claim, procure the government title thereto and retain it for his own benefit.

Either Appellant Turner's acts were so fraudulent that no title whatever passed for want of authority in the General Land Department to issue such patent, and it is absolutely null and void, or if, title passed thereunder, the patentee holds, not by virtue of his own right, for he cannot by a legal line of conveyance connect himself with the original locator, but as the trustee of the equitable owner thereof, and a court of equity will decree that the title so held shall pass to the party justly entitled thereto. This the Circuit Court has done by its decree.

"A patent executed in the proper form, by proper officers for a portion of the public land which is subject to sale, passes title thereto and is conclusive at law."

Smelting Co. v. Kemp, 104 U. S., 636.

Steel v. Smelting Co., 106 U. S., 447.

"Party aggrieved by issue of such patent may obtain relief in equity or by applying to officers of the Government to bring suit to set it aside."

"When through fraud, mistakes or any reason recognized as a ground of equitable interference, the legal title to any portion of the public domain has been obtained by a party, when in equity and good conscience, another was better entitled, a court of equity will treat the patentee as a trustee and compel him to convey."

Bassick Mining Co., v. Davis, 11 Colo., 133.

Fillmore v. Reithmann, 6 Colo., 120.

Wells v. Francis, 7 Colo., 396.

Johnson v. Towsley, 13 Wall, 74.

Moore v. Robbins, 96 U. S., 530.

Marxuez v. Frisbie, 101 U. S., 473.

"Where one party wrongfully obtains the legal title to land which in equity and good conscience belongs to another, whether he acts in good faith or otherwise, he will be charged in equity as a constructive trustee of the equitable owner."

Larkin v. Sierra Butte G. M. Co., 25 Jud. Rep., 337.

Section 2324, R. S. U. S., does not contemplate an adverse proceedings by one co-tenant against another. This court speaking by Fields, J., in the case of St.

Louis Smelting Co., 2 Kemp., 14. Otto, 636, commenting upon what was necessary to be done under Sections 2324 and 2325 R. S. said:

6. "The statue then proceeds to declare that if an adverse claim is filed during the period of publication, it must be done upon the oath of the party making it, and must show the nature, boundaries and extent of such adverse claim, and all proceedings, except the publication of the notice and the making and filing of the affidavit, shall be thereupon stayed until the controversy shall have been settled by a decision of the court of competent jurisdiction, or the adverse claim waived. And it is made the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction to determine the question of the right of possession, and to prosecute the same with reasonable diligence to final judgment; and a failure to do so is to be deemed a waiver of his adverse claim."

In this case there was not any conflict of boundaries, or of locations, both appellant Turner and appellee claimed undivided interests in one and the same location. Can you survey and bound an undivided interest in a mining claim? Suppose in this instance an adverse claim had been rejected by the Register and Receiver for the reason that no plat showing a conflict of locations accompanied the same, would appellee be barred before the Land Department because it was an impossibility for him to come within its rules, and be barred in the courts because he failed to do an impossible thing?

Appellant Turner and appellee base their possessory

title upon the same foundation. There is no conflict of location, no priority of rights, or dispute as to the lines bounding the common property.

Appellant Turner, it is claimed, went into possession of said lode, November 20, 1884, at that time he had no title and acquired none until March 3, 1885, if he did then. "Turner was not there in hostility to the rights of Amos Sawyer, nor those of Alice E Finch's, but in support of them." (Appellants Brief, p. 4.)

Suppose appellee owing a greater interest in the lode than appellants had not desired to procure a patent, could appellants use the provisions of this statute to deprive him of his interest therein ?

After a mining location has been made, and so long as the annual labor is performed, the various owners thereof hold their possessory title under the laws of the State or Territory wherein such property is located, and where one co-tenant is dispossessed in Colorado, another has five years within which to commence an action for recovery.

Gen'l Statutes Colo., Secs. 2186–2188, p. 675.

The United States Supreme Court has announced its general rule as follows: "The general rule is that where several set up conflicting claims to property, with which a special tribunal may deal, as between one party and the Government regardless of the rights of others, the latter may come into the ordinary Courts of Justice, and litigate the conflicting claims.

"Nor do the regulations of the Commissioner of the

General Land Office, whereby a party may be heard to prove his better claim to enter, oust the jurisdiction of the Courts of Justice. *We announce this to be the settled doctrine of this Court.*"

Garland v. Wynn, 20 How., 8.

*A tenant in common cannot* in any case become an adverse claimant under this statute; therefore, in this instance at least, the fact that no "Adverse Claim" was filed before the Register and Receiver, is no bar to complainant bringing this cause into this court. See Rules, Regulations, Holdings, Decisions, etc., Weeks Mineral Lands, pages 448 to 453.

We do not consider this a case where it is necessary for the court to support a ruling of the Land Department in order to come to a conclusion. The decree rendered by the Circuit Court in this cause is based upon principles of law, and rules of equity which have governed the rights of property for hundreds of years, and if any one thing is settled in this country it is the fact that for all wrongs there is a remedy, for all rights there is a method of enforcement, and that false and fraudulent actions in procuring that which in equity and good conscience belongs to another, will not bar a recovery.

We respectfully submit that the decree should be affirmed.

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